DRAFT REPORT ON U.S. EPA REVIEW OF OHIO ENVIRONMENTAL PROGRAMS

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LEO-01	July 10, 2000 Letter from Frank J. Reed, Jr. (Assistant Attorney General, Chief-Environmental Enforcement Section, OAG) to Bertram C. Frey (Deputy Regional Counsel, Region 5 U.S. EPA), with attached list of consent decrees filed by OAG from 1990-2000.
LEO-02	June 21, 2000 Letter from Joseph P. Koncelik (Deputy Director for Legal Affairs, OEPA) to Bertram C. Frey (Deputy Regional Counsel, Region 5 U.S. EPA), responding to the U.S. EPA's "List of Follow up Items for the Review of Ohio's Authorized, Approved or Delegated Environmental Programs" including 13 Attachments.
LEO-03	In the Matter of MascoTech, Inc., regarding the property known as the Steelcraft Manufacturing Facility, 9017 Blue Ash Rd., Blue Ash, OH 45242, dated December 16, 1999. Covenant Not to Sue; Director's Final Findings and Orders.
LEO-04	"Environmental Enforcement" Excerpts: Annual Report: 1999. Office of the Ohio Attorney General, pp. 17-18; Annual Report:

	1998. Office of the Ohio Attorney General, pp. 22-23; and Term Report: 1995-1998. Office of the Ohio Attorney General, pp. 37-38.
LEO-05	Criminal Enforcement Docket: "Answers to USEPA Questions"; Criminal Cases Adjudicated 1995-1999.

APPENDIX: ACRONYM DICTIONARY

DRAFT REPORT ON U.S. EPA REVIEW OF OHIO ENVIRONMENTAL PROGRAMS EXECUTIVE SUMMARY AND OVERVIEW

I. INTRODUCTION

Since January of 2000, the United States Environmental Protection Agency (U.S. EPA) has been conducting reviews of a number of federal environmental programs administered by the Ohio Environmental Protection Agency (OEPA) in response to a petition submitted by four Ohio environmental groups expressing concerns with Ohio environmental programs and requesting that we withdraw and/or revoke our authorization, delegation and/or approval to OEPA for certain programs. U.S. EPA conducted its reviews and is preparing a report in order to gather information and evaluate whether it is appropriate or not to initiate withdrawal and/or revocation proceedings in response to the petition.

This draft report describes U.S. EPA's preliminary conclusions based upon its investigations to date of the OEPA programs mentioned in the petition. The final report will contain U.S. EPA Region 5's recommendations on whether or not it is appropriate to initiate withdrawal and/or revocation proceedings for programs mentioned in the petition. We are releasing this draft report to the public to solicit comments for U.S. EPA to consider before it makes its determinations.

We will be holding a public availability session at (time) on (date at least 30 days after draft report is released) at (location) to explain this report. We will accept written comments until (date at least 30 days after public availability session). Comments can be sent to:

Robert Paulson (P-19J)
Office of Public Affairs
U.S. EPA, Region 5
77 West Jackson Blvd.
Chicago, IL 60604

This report is not a final report and does not constitute a final decision on whether or not to initiate formal withdrawal or revocation proceedings with respect to any program that is the subject of the environmental groups' petition. Nor does it constitute a decision on whether or not to grant or deny the environmental groups' petition.

II. BACKGROUND

In 1997, D. David Altman submitted and amended a petition on behalf of Ohio Citizen Action, the Ohio Environmental Council (which was later replaced by the Ohio Public Interest Research Group (PIRG)), Rivers Unlimited, and the Ohio Sierra Club asking U.S. EPA to withdraw or revoke Ohio's authorization and/or approval to administer the Clean Air Act (CAA) Title V, the Clean Water Act National Pollutant Discharge and Elimination System (NPDES) and the Resource Conservation and Recovery Act (RCRA) hazardous waste programs in Ohio based on the Ohio Audit Law.

Mr. Altman supplemented this petition on September 18, 1998, August 4, 1999, and January 27, 2000, to add allegations addressing how the OEPA was implementing its programs. The petitioners' September 18, 1998 Supplement alleged that OEPA was mishandling these three programs. Their August 4, 1999 Supplement included additional justification for petitioners' allegations regarding these implementation issues. Their January 27, 2000 Supplement/Amendment added allegations to their petition regarding several Clean Air Act programs and the RCRA Solid Waste Management Plan. The petitioners also submitted numerous affidavits in support of the petition in the summer of 2000.

As supplemented, the petition expresses concerns with Ohio environmental programs and asks U.S. EPA to withdraw and/or revoke its authorization, delegation and/or approval of OEPA's RCRA hazardous waste program and Solid Waste Management Plan; Clean Water Act National Pollutant Discharge Elimination System (NPDES) program; and Clean Air Act Standards of Performance for New Stationary Sources (NSPS), New Source Review (NSR), Prevention of Significant Deterioration (PSD), Noncompliance Penalty, and Title V programs.

Among other things, the petitioners question how OEPA addresses regulated facilities, follows up on complaints, monitors facilities, issues permits, sets standards, releases information to the public, pursues enforcement, and conducts and oversees cleanups.

III. AUDIT LAW ISSUES

On December 21, 2000, U.S. EPA denied the component of the petitions that allege legal authority deficiencies associated with the Audit Law. After lengthy discussions between U.S. EPA, the OEPA and the Ohio Attorney General's Office that involved representatives of petitioners and industry, U.S. EPA reached an understanding with OEPA on changes and interpretations to the Audit Law that addressed U.S. EPA's legal authority concerns. By statutory amendment, the State of Ohio adopted these changes, which became effective on September 30, 1998. U.S. EPA reviewed the minimum statutory and regulatory requirements for

federal environmental programs cited in the petition and concluded that the amended Audit Law

did not form a basis for withholding or withdrawing approval or authorization of the Ohio environmental programs.

IV. IMPLEMENTATION ISSUES

In response to the allegations of program implementation issues, U.S. EPA has been conducting a comprehensive review of the Ohio environmental programs mentioned in the petition since January of 2000. The purpose of U.S. EPA's review is to determine whether cause exists to commence withdrawal and/or revocation proceedings. U.S. EPA staff have visited OEPA district and central offices, the Ohio Attorney General's Office and local air agencies, interviewed employees, and reviewed files. This report summarizes the findings from those reviews. We have organized the report into three main parts covering each of the statutes governing the programs challenged by the petition: RCRA, CWA and CAA; and a fourth part containing overviews of Ohio's legal environmental enforcement offices and criminal enforcement program.

In each part, we have summarized the petitioners' allegations and indicated our preliminary conclusions with respect to the request for withdrawal and/or revocation based on the information reviewed to date. In addition, we have identified recommendations that, if implemented, would alleviate concerns related to withdrawal criteria and obviate the need for further review.

A. CLEAN AIR ACT

U.S. EPA examined both the enforcement and permitting components of the five CAA programs the petitioners challenge: Title V permitting, Prevention of Significant Deterioration (PSD), New Source Review (NSR), Standards of Performance for New Stationary Sources (NSPS), and Noncompliance Penalties. Because each program has a different withdrawal or revocation mechanism, findings were evaluated based on the criteria for the specific programs. In its preliminary investigation of the allegations, U.S. EPA discovered various permitting and enforcement issues that may be sufficient to support commencement of withdrawal or revocation proceedings for Ohio's delegated PSD and NSPS programs and its federally approved Title V program if OEPA does not address the issues and the findings are confirmed upon further investigation. The draft report makes recommendations for program improvement to address these issues.

1. CAA Enforcement

With respect to OEPA's CAA enforcement program, the petitioners allege that OEPA has failed to properly apply environmental regulations; to inspect and monitor activities subject to regulation; to take enforcement action or to respond quickly when enforcement was needed; to seek adequate penalties; to apply Major Stationary Source (MSS) requirements; to identify

sources subject to Maximum Achievable Control Technology (MACT); and to verify the accuracy of representations made by regulated entities. The petitioners also allege that OEPA exhibits hostility towards citizens by excluding them from the enforcement process and discussions between OEPA and regulated entities, charging them excessive fees for copying records, and ignoring or disregarding citizen complaints. Finally, petitioners allege that the Audit Privilege and Immunity Law prevents OEPA and local agencies access to information needed to document violations and thereby denies citizens access to information.

The preliminary findings from U.S. EPA's review of OEPA's CAA enforcement programs are summarized as follows:

- OEPA currently employs fewer employees than it had indicated it would need to run its air programs;
- There has been a decline in recent years in OEPA air inspections, enforcement case conclusions, complaint investigations and collected penalty amounts;
- There are potential gaps in OEPA's legal authority to implement portions of the delegated NSPS and NESHAPs programs;
- OEPA has no comprehensive system or process for identifying PSD sources that have not identified themselves to OEPA;
- OEPA does not have procedures to check the accuracy of statements made by regulated entities;
- OEPA does not have a training program that ensures a minimal level of training and consistency across the State;
- OEPA has not provided inspection strategy and compliance tracking and enforcement program plans as part of its Title V program application; and
- OEPA's Division of Air Pollution Control currently has a very high level of vacancies with no system in place to expeditiously fill those vacancies.

Although it is premature for U.S. EPA to reach definitive conclusions as to the applicability of the withdrawal criteria to these concerns, these findings, if verified upon further review, may provide a basis for the commencement of withdrawal or revocation proceedings for one or more of the CAA programs unless OEPA makes definitive commitments to address U.S. EPA's concerns. As summarized below, this report contains a number of specific recommendations.

2. CAA Permitting

With respect to permitting, the petitioners allege that OEPA has failed to correctly determine a facility's status for purposes of Title V applicability; to require permits for construction of sources; to permit sources in a timely manner; to require Lowest Achievable Emission Rate (LAER) and offset reduction; to perform analyses of alternative sites for NSR source applicants; to determine correctly a facility's Hazardous Air Pollutant (HAP) emissions; to be responsive to citizens or to make necessary information publicly available; and to collect appropriate

permitting fees under Title V.

The preliminary findings from U.S. EPA's review of OEPA's CAA Title V permitting program are summarized as follows:

- OEPA has fallen behind the statutory and regulatory timetable for issuing final Title V permits;
- OEPA has not implemented a phase II Acid Rain program as part of its Title V permitting program;
- OEPA is not obtaining "sanitized" versions of Title V permit applications from applicants with confidential claims to forward to the public;
- OEPA is including incomplete statements of basis with draft Title V permits; and
- OEPA does not prohibit by regulation the exclusion of insignificant emission units from Title V applications and permits.

The report preliminarily concludes that if OEPA does not address these concerns, they might form a sufficient basis for initiating withdrawal proceedings. The findings that OEPA does not have a Phase II Acid Rain program, does not prohibit by regulation the exclusion of insignificant emission units, and is not obtaining sanitized versions of Title V applications are more serious in nature, and require definite action by OEPA.

In regard to the PSD program, U.S. EPA found that OEPA refused to extend the time for comment on two draft PSD permits with complex issues, and might be modifying PSD permits inappropriately through an administrative process rather than a formal public comment and review process. Unless OEPA addresses these concerns, U.S. EPA recommends further investigation and possible commencement of withdrawal or revocation proceedings for the PSD program.

3. Recommendations

The report on OEPA's air programs also contains a number of recommendations. OEPA's commitment to adopting these recommendations may obviate any need for U.S. EPA to recommend the commencement of withdrawal or revocation proceedings. The report recommends that OEPA:

- Obtain adequate resources, including personnel, to run its various delegated and approved programs;
- Better define and expand the role of the public in its regulatory activities, including potentially drafting and making publicly available a public participation strategy policy, which establishes, among other things, uniform minimum standards to be followed by all field offices for the receipt, investigation, and resolution of citizen complaints;
- Increase issuance of final Title V operating permits, properly develop and implement an

Acid Rain Phase II program in conjunction with its Title V program, and ensure that companies sanitize Title V applications which can be provided to the public;
• Better define its policy on comment period extensions for complex PSD permit applications and discontinue its practice of administratively modifying PSD permits;
• Create a specific inspection system to identify unpermitted PSD sources;
• Describe how all sources subject to the delegated NSPS, PSD and NESHAPS programs are properly identified and permitted, submit a request to U.S. EPA for approval to sub-delegate those programs to its field offices, submit the various annual and quarterly reports required by each delegation document, and ensure that none of Ohio's laws or regulations (or OEPA's interpretation of those laws or regulations) hinder its ability to implement the various federally delegated air programs;
• Better describe its Title V inspection strategy, monitoring and enforcement tracking plans, including procedures to follow when conducting inspections and guidance as to what to document in the inspection report;
• Create a standardized training program which ensures both a minimum level of training for all OEPA and local air pollution authority employees and consistency in implementation of Ohio's delegated and approved air programs across the State; and
• Create a system to fill vacancies more quickly.

On a final note, U.S. EPA is currently reviewing all state Title V programs nationwide in accordance with a recent settlement that the federal government entered into with various environmental groups. All findings and recommendations in this report in regard to Ohio's Title V program are therefore subject to change and/or additions pending the conclusion of this ongoing review of Ohio's Title V program.

B. CLEAN WATER ACT

1. Allegations

The petitioners allege that OEPA: 1) has not been complying with the State's antidegradation requirements in siting landfills; 2) failed to develop TMDLs; 3) failed to adopt requirements consistent with the Water Quality Guidance for the Great Lakes System; 4) has not been properly regulating concentrated animal feeding operations (CAFOs); 5) has improperly granted compliance certifications under the Clean Water Act; and 7) has an inadequate NPDES enforcement program. Petitioners also allege that Ohio's antidegradation rules are deficient.

2. Preliminary Conclusions

With respect to the allegations concerning antidegradation, TMDLs and the Water Quality Guidance, the draft report preliminarily concludes that there is not sufficient cause to commence withdrawal proceeding with respect those issues. With respect to CAFOs, OEPA has committed to require documented CAFO dischargers to apply for NPDES permits, to develop and issue

appropriate NPDES permits for CAFOs, and to take appropriate CWA enforcement actions in response to CWA violations committed by CAFOs. With regard to allegations regarding improper compliance certification under the Clean Water Act, states enjoy a wide latitude in determining whether to grant Section 401 certification. As to allegations that OEPA's NPDES enforcement program is inadequate, the draft report preliminarily concludes that there is not sufficient cause to commence withdrawal proceedings, providing that OEPA establishes a schedule for resolving problems with implementation of OEPA's new data management system ("SWIMS"), electronic reporting of DMRS, and accuracy of information entered into U.S. EPA's Permit Compliance System (PCS).

EPA investigated one NPDES issue not raised by petitioner. The draft report evaluates OEPA's approach to addressing "practical quantification levels" (PQLs) in situations where NPDES permits contain water quality based effluent limits (WQBELs) below the PQL. The draft report notes that Ohio's approach for addressing WQBELs that are below the quantification level is generally consistent with federal requirements.

3. CWA Recommendations

Among other things, the draft report recommends that the State provide an expedited schedule for resolving outstanding issues with SWIMS; develop and receive approval for its inspection strategy; and, with respect to PQLs, clarify that, where there is a minimum level for analytical procedures specified in or approved under federal regulations, the minimum level should constitute the quantification level for permits outside the Lake Erie basin.

C. RESOURCE CONSERVATION AND RECOVERY ACT

1. *Hazardous Waste*

The petitioners claim that OEPA avoids enforcing its environmental laws and fails to inspect and monitor activities subject to regulation. Furthermore, the petitioners claim that OEPA abandoned its existing enforcement efforts in favor of the State's Voluntary Action Program (VAP). The January 27, 2000 supplement to the petition includes a table that lists the following installations as examples in which OEPA failed to carry out certain aspects of the RCRA hazardous waste program: Georgia-Pacific Resin in Columbus, the Tremont Sanitary Landfill in Springfield, the Bond Road Landfill in Whitewater Township, the River Valley High School in Marion, AK Steel in Middletown, WTI in East Liverpool, Envirosafe in Oregon, Brush Wellman in Elmore, PPG Industries in Circleville, Elano Corporation in Beavercreek, and Worthington Custom Plastic in Warren County. The petitioners also claim that OEPA fails to exercise control over authorized hazardous waste program activities.

Based on U.S. EPA's evaluation of petitioners' claims, a review of the annual audits of Ohio's hazardous waste enforcement program from 1995 through 2000, and an evaluation of the overall

Ohio RCRA program as well as case-specific information, U.S. EPA has concluded preliminarily that the evidence does not substantiate petitioners' allegations or constitute sufficient cause to warrant commencement of formal withdrawal proceedings. We are requesting an Attorney General's Opinion to clarify the application of the VAP program and its impact, if any, on authorization requirements for permitting and corrective action, accessing information and releasing information.

2. *Solid Waste*

The petitioners claim that Ohio's solid waste program fails to ensure that waste is disposed of in an environmentally sound manner and in compliance with federal law. The petitioners also claim that Ohio fails to close or upgrade existing open dumps in accordance with federal law. Furthermore, the petitioners claim that OEPA lacks the ability to adequately control air emissions, surface water discharges and groundwater contamination from municipal solid waste landfills (MSWLFs). The petitioners list five MSWLFs as examples of alleged failures of the program: the Clarkco Sanitary Landfill in Springfield, the Tremont Sanitary Landfill in Springfield, the ELDA Recycling & Disposal Facility in Cincinnati, the Bond Road Landfill in Whitewater Township and the Rumpke Sanitary Landfill in Hamilton County.

Based on the criteria set forth in the RCRA regulations and U.S. EPA's evaluation of petitioners' claims and the Ohio MSWLF permit program, U.S. EPA has concluded preliminarily that there does not appear to be sufficient substantive information to justify commencing formal withdrawal proceedings to determine whether or not the current Ohio MSWLF permit program meets the minimum federal requirements for an adequate program.

D. GENERAL ENFORCEMENT

U.S. EPA also reviewed the OEPA Office of Legal Services, the Ohio Attorney General's Environmental Division and the Attorney General's Bureau of Criminal Investigation. U.S. EPA obtained an overview of how Ohio's legal offices function and bring enforcement cases, including the types, quantities and results of enforcement activities, and legal perspectives relating to particular programs.

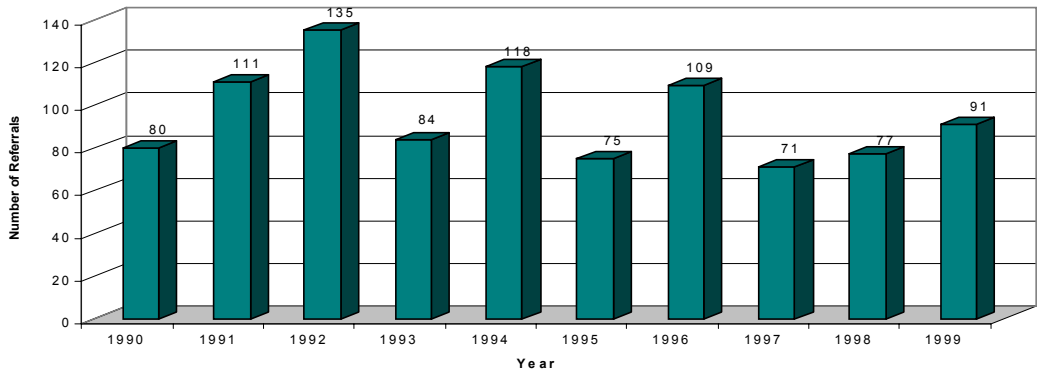
In this general overview, U.S. EPA also looked for multi-media enforcement because the petitioners had asked us to look at the allegations from a multi-media perspective. The federal environmental programs stem from separate federal authorities that do not require a multi-media approach. We found that Ohio does not approach enforcement from a multi-media perspective. Since our authorities do not require a multi-media approach, this does not affect our authorization, delegation and/or approval of Ohio programs.

U.S. EPA's preliminary conclusion is that Ohio agencies initiate, prosecute and conclude a significant number of environmental enforcement cases. In particular, Ohio's criminal

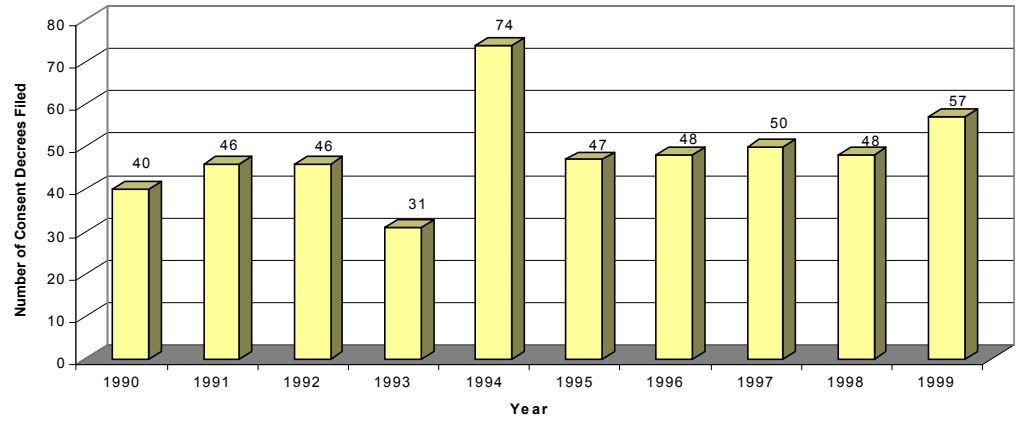
environmental enforcement program is considered among the best in the nation. Of note, Ohio has administratively and/or civilly enforced against and/or resolved violations at 28 of the 57 facilities mentioned in the petitioners' August 4, 1999 supplement, and has conducted investigations at many of the others. Working in partnership with OEPA, U.S. EPA has enforced against or otherwise addressed most of the remaining facilities that have or have had identified enforcement problems. This is not to say, however, that all violations at all of the listed facilities have been addressed. While either OEPA or U.S. EPA has already addressed certain violations at those facilities, there may be other violations that have not yet been addressed and/or remedied. U.S. EPA preliminary finds that Ohio maintains an active enforcement presence in the environmental programs U.S. EPA reviewed.

The following graphs and chart provide overview data on Ohio's enforcement of environmental programs.

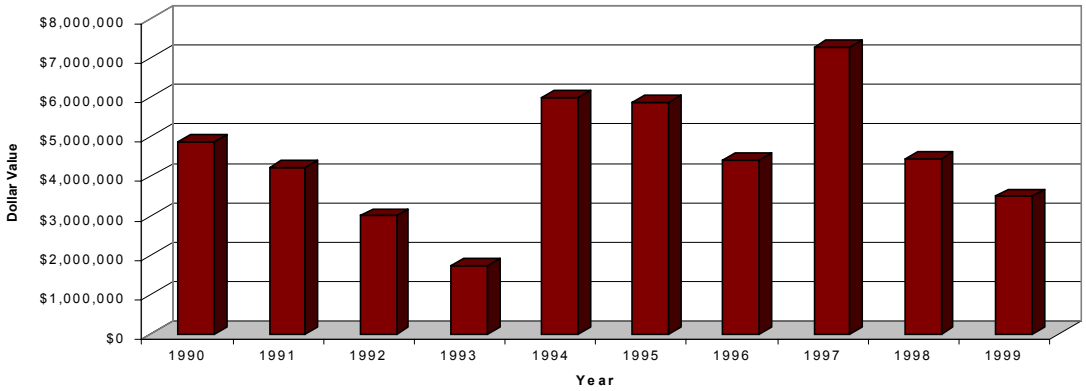
Number of Referrals of Environmental Cases to the Ohio Attorney General 1990 - 1999

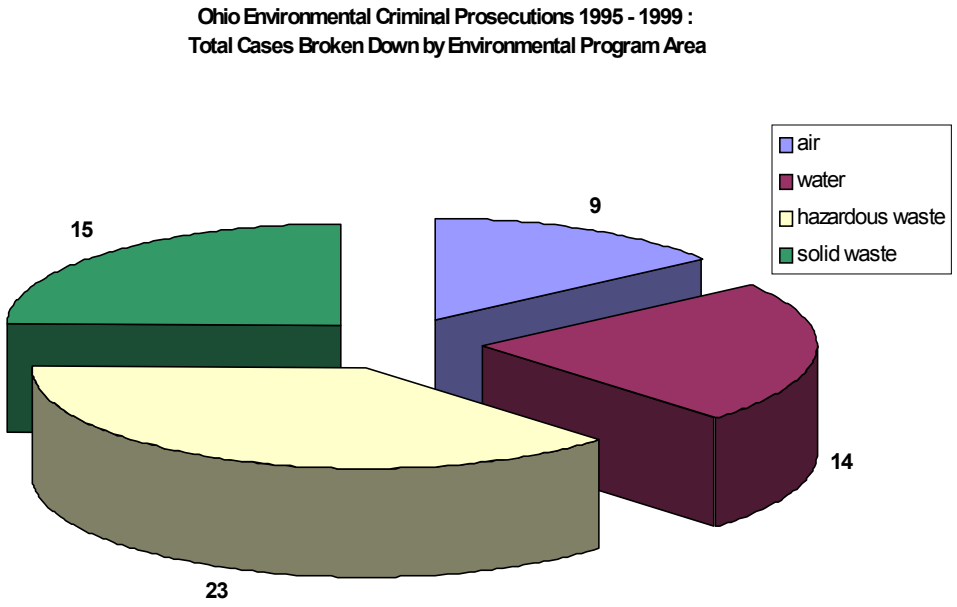


Number of Consent Decrees Entered into by the Ohio Attorney General 1990 - 1999 in Environmental Cases



Ohio Attorney General: Dollar Value of Civil Judicial Penalties in Environmental Cases 1990 - 1999




Ohio Environmental Criminal Prosecutions 1995 - 1999 :
Total Cases Broken Down by Environmental Program Area
air
water
hazardous waste
solid waste
9
14
23
15

OHIO PETITION AIR REVIEW
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August 30, 2001 Draft Report on Review of Ohio Programs

OHIO PETITION AIR REVIEW

I. SUMMARY

A. INTRODUCTION

The United States Environmental Protection Agency, Region 5 (U.S. EPA) has received a petition from four Ohio environmental groups which, as amended and supplemented, expresses concerns about the Ohio Environmental Protection Agency (OEPA)'s environmental programs and asks U.S. EPA to withdraw its approval and/or delegation of the following five Ohio Clean Air Act (CAA) programs: 1) the Title V permitting program (Title V), 2) the New Source Review (NSR) program, 3) the Prevention of Significant Deterioration (PSD) program, 4) the Noncompliance Penalty program, and 5) the Performance Standards for New Stationary Sources (NSPS) program. U.S. EPA conducted independent reviews of Ohio's air permitting and enforcement programs, and brought the preliminary findings together in one consolidated report that preliminarily applies the withdrawal criteria of the various programs to those initial findings. Where U.S. EPA found concerns with OEPA's implementation of its federally delegated or approved federal air programs, U.S. EPA has recommended corrective action by which OEPA can address those concerns. In this report, U.S. EPA is making initial findings only. Further fact-findings, including responses by OEPA and the general public, may change U.S. EPA's initial findings prior to making a final determination as to whether or not to recommend the commencement of withdrawal or revocation proceedings to the Administrator and/or the Regional Administrator.

B. ALLEGATIONS

After careful review of the supplemented petition, the U.S. EPA air enforcement and permitting reviewers identified the following allegations raised by the petitioners:

1. ENFORCEMENT

With respect to enforcement, the petition alleges that: 1) OEPA has failed to inspect and monitor activities subject to regulation; 2) OEPA has failed to take enforcement action and responds slowly when enforcement is needed; 3) OEPA has failed to seek adequate penalties; 4) OEPA has failed to apply Major Stationary Source (MSS) requirements; 5) OEPA has failed to identify sources subject to Maximum Achievable Control Technology (MACT); 6) OEPA has failed to verify the truth and accuracy of representations made by regulated entities; 7) OEPA has failed to properly apply environmental regulations; 8) the audit privilege law prevents OEPA and local agency access to information needed to document violations; 9) OEPA is hostile to citizens; 10) OEPA excludes citizens from discussions between it and regulated entities; 11)

OEPA subjects citizens seeking access to records to excessive copying charges; 12) OEPA accepts company representations as true while citizen complaints are subjected to complex procedures which reduce the likelihood a complaint will be investigated or verified; 13) the audit privilege law denies citizens access to information because OEPA does not get the information from companies; and 14) OEPA excludes citizens from having input into the enforcement process.

2. PERMITTING

With respect to permitting, the petition alleges that OEPA has: 1) failed to correctly determine a facility's status as a MSS in a nonattainment or PSD area for purposes of Title V applicability; 2) allowed construction of sources without a permit; 3) failed to permit sources in a timely manner; 4) failed to require Lowest Achievable Emission Rate (LAER) and offset reduction, and has failed to perform analyses of alternative sites for NSR applicants; 5) failed to correctly determine a facility's Hazardous Air Pollutant (HAP) emissions for purposes of Title V applicability; 6) failed to be responsive to citizens or to make publicly available necessary information; and 7) failed to collect appropriate permitting fees under Title V.

C. WITHDRAWAL CRITERIA

Each of the federal CAA programs delegated or approved to the State of Ohio has its own legal criteria and standards for approval or delegation, as well as for withdrawal, revocation, or other consequences for program or implementation inadequacies. In regard to Ohio's federally delegated PSD and NSPS programs, the Regional Administrator can revoke those programs in part or in whole for Ohio's failure to adequately implement them. In regard to Ohio's federally approved Title V program, the Administrator can withdraw the program from Ohio or apply other CAA prescribed sanctions if she finds program or implementation inadequacies. It is also important to note that Ohio has submitted a PSD State Implementation Plan (SIP) program for approval by U.S. EPA, and U.S. EPA has recently published in the Federal Register its draft conditional approval of the program for notice and comment. Once the PSD program is conditionally approved as part of Ohio's SIP, the PSD delegation will no longer be necessary, and therefore U.S. EPA will continue its review of the adequacy of Ohio's PSD program under the SIP regulatory framework. For Ohio's NSR SIP program and PSD program, if and when it is conditionally approved as part of Ohio's SIP, the Administrator must follow the procedures laid out in the CAA for SIP inadequacies or failure to implement a SIP; consequences include the possible imposition of sanctions as well as potential disapproval of Ohio's SIP. Finally, since U.S. EPA has never delegated the federal noncompliance penalty program to Ohio, it cannot withdraw or revoke it. To the degree that petitioners challenged this program because of their concerns that OEPA is not pursuing adequate penalties from violators of the federally delegated and approved programs, U.S. EPA has reviewed penalty adequacy under its review of those other programs. To arrive at their initial findings, U.S. EPA reviewers conducted an investigation of each of the allegations to determine the veracity of the allegation. U.S. EPA has

preliminarily applied the findings to the withdrawal criteria for each program to provide an initial indication of each finding's gravity.

D. EVALUATION

U.S. EPA, in its preliminary investigation of the allegations, has discovered various permitting and enforcement areas of concern that may lead to withdrawal or revocation proceedings for Ohio's delegated PSD and NSPS programs and its federally approved Title V program if OEPA chooses not to address them and if the findings are confirmed upon further investigation. In regard to Ohio's nonattainment area NSR program, which is part of its approved state implementation plan, U.S. EPA discovered nothing in its review to suggest that Ohio is not adequately enforcing its federally approved NSR program. The fact that only a small portion of Ohio remains in nonattainment with the National Ambient Air Quality Standards (NAAQS) made it difficult to assess the adequacy of OEPA's program for those areas. Accordingly, the review did not identify areas of concern that could rise to the level of commencement of withdrawal proceedings for the NSR program.

1. ENFORCEMENT

In regard to the most significant and relevant enforcement findings, the U.S. EPA air enforcement reviewers preliminarily found and/or noted that:

- OEPA currently employs fewer employees than it had indicated it would need to run its air programs;

- There has been a decline in recent years in OEPA air inspections, enforcement case conclusions, complaint investigations and collected penalty amounts;

- There are potential gaps in OEPA's legal authority to implement portions of the delegated NSPS and NESHAPs programs;

- OEPA has no comprehensive system or process for identifying PSD sources that have not identified themselves to OEPA;

- OEPA does not have procedures to check the accuracy of statements made by regulated entities;

- OEPA does not have a training program that ensures a minimal level of training and consistency across the state;

- OEPA has not provided inspection strategy and compliance tracking and enforcement program plans as part of its Title V program application; and

• OEPA's Division of Air Pollution Control currently has a very high level of vacancies with no system in place to expeditiously fill those vacancies.

While the U.S. EPA is not recommending the initiation of withdrawal proceedings at this point due to the preliminary nature of the findings, these concerns, if unaddressed by OEPA and verified upon further investigation, may constitute grounds for commencement of withdrawal proceedings, potentially for one or more of Ohio's federally delegated and approved air programs, including the Title V, PSD, and NSPS programs.

2. PERMITTING

The preliminary findings from U.S. EPA's review of OEPA's CAA Title V permitting program can be summarized as follows:

• OEPA has fallen behind the statutory and regulatory timetable for issuing final Title V permits;

• OEPA has not implemented a phase II Acid Rain program as part of its Title V permitting program;

• OEPA is not obtaining "sanitized" versions of Title V permit applications from applicants with confidential claims to forward to the public;

• OEPA is including incomplete statements of basis with draft Title V permits; and

• OEPA does not prohibit by the regulation the exclusion of insignificant emission units from Title V applications and permits.

If OEPA does not address these concerns, and upon further investigation, they may require initiation of withdrawal proceedings for Ohio's Title V program. The findings that OEPA does not have a Phase II Acid Rain program, does not prohibit by regulation the exclusion of insignificant emission units, and is not obtaining sanitized version of Title V applications are more serious in nature, and require definite action by OEPA. U.S. EPA has also identified already-resolved areas of concern with OEPA's Title V permitting program. To avoid initiation of withdrawal proceedings for these past areas of concern, OEPA must commit to correct all Title V permit defects caused by these resolved areas of concern for each permit at the five year permit reissuance period.

In regard to the PSD program, U.S. EPA found that OEPA refused to extend the time for comment on two draft PSD permits with complex issues, and might be inappropriately administratively modifying PSD permits that should be modified through a formal public notice and comment process. Unless OEPA addresses these concerns, U.S. EPA recommends further

investigation and possible commencement of revocation or withdrawal proceedings for the PSD program.

Both the air permitting and air enforcement sections of the report also describe a number of other concerns which either do not rise to the level of commencement of withdrawal or revocation proceedings or do not directly apply to the withdrawal or revocation criteria. U.S. EPA is conveying suggestions and recommendations pertaining to such concerns by separate correspondence.

On a final note, U.S. EPA is currently reviewing all state Title V programs in accordance with a recent settlement that the federal government entered into with the Sierra Club and the New York Public Interest Research Group. All findings and recommendations in this report in regard to Ohio's Title V program are therefore subject to change and/or additions pending the conclusion of this ongoing review of Ohio's Title V program.

E. RECOMMENDATIONS

The following recommendations pertain to those identified concerns that bear directly on the withdrawal and revocation criteria, and as such, should be a priority for OEPA in regard to undertaking corrective action to improve its program. U.S. EPA recommends that OEPA:

• Obtain adequate resources, including personnel, to run its various delegated and approved programs;

• Better define and expand the role of the public in its regulatory activities, including potentially drafting and making publicly available a public participation strategy policy which establishes, among other things, uniform minimum standards to be followed by all field offices for the receipt, investigation, and resolution of citizen complaints;

• Increase issuance of final Title V operating permits, properly develop and implement an Acid Rain Phase II program in conjunction with its Title V program, and ensure that companies submit sanitized Title V applications which can be provided to the public;

• Better define its policy on comment period extensions for complex PSD permit applications and discontinue its practice of administratively modifying PSD permits;

• Create a system to identify unpermitted PSD sources;

• Describe how it is ensuring that all sources subject to the delegated NSPS, PSD and NESHAPS programs are being properly identified and permitted, submit a request to U.S. EPA for approval to sub-delegate those programs to its field offices, submit the various annual and quarterly reports required under by each delegation document, and ensure that none of Ohio's

laws or regulations (or how OEPA interprets those laws or regulations) hinder its ability to implement the various federally delegated air programs;

- Better describe its Title V inspection strategy, monitoring and enforcement tracking plans, including procedures to be followed when conducting inspections, and guidance as to what uld to document in the inspection report;
- Create a standardized training program which ensures both a minimum level of training for all OEPA and local air pollution authority employees and consistency in implementation of Ohio's delegated and approved air programs across the State; and
- Create a system to fill vacancies more quickly.

REVIEW OF OHIO AIR PROGRAMS
(August 2001 Draft)

II. BACKGROUND

U.S. EPA Region 5 has received a petition from four Ohio environmental groups which, as amended and supplemented, expresses concerns about Ohio's environmental programs and asks U.S. EPA to withdraw its approval and/or the federal delegation of the following five Ohio CAA programs: 1) Title V, 2) the NSR program, 3) the PSD program, 4) the Noncompliance Penalty program, and 5) the NSPS program.

The petition, as originally submitted and amended in 1997, asked U.S. EPA to withdraw its approval of the Title V program based on concerns with the Ohio audit privilege and immunity law (Audit Law). Supplements to the original petition added requests to withdraw all five air programs based on implementation allegations.

By a letter dated December 21, 2000, U.S. EPA denied the component of the petition that requested withdrawal based on legal authority issues associated with the Audit Law. Ohio amended and interpreted the Audit Law to address U.S. EPA's authorization, delegation, and approval concerns.

In response to allegations in petition supplements dated September 18, 1998, August 4, 1999, and January 27, 2000, U.S. EPA initiated a review of the air enforcement and permitting program carried out by the OEPA and the local air pollution authorities (LAAs) that implement and enforce air pollution laws in Ohio. This air program review report addresses the allegations in those petition supplements that criticized OEPA's implementation of the five air programs.

In response to a petition received from four Ohio environmental group employees of U.S. EPA Region 5's Air and Radiation Division (ARD) and Office of Regional Counsel (ORC) developed protocols for reviewing the enforcement and permitting issues alleged in the supplemented petition, and sent draft copies both to OEPA and the petitioners. See Attachment A. In accordance with the process laid out in the protocols, U.S. EPA reviewers gathered information from a variety of sources in early 2000, including on-site visits to OEPA State-wide and district offices and LAA offices (the OEPA district and LAA offices are collectively called 'field offices'). Region 5's Air Enforcement and Compliance Assurance Branch (AECAB) and Air Programs Branch, Permit Section, respectively, performed the reviews of the air enforcement and permitting allegations. This report consolidates the findings and recommendations for both the enforcement and permitting reviews.

August 30, 2001 Draft Report on Review of Ohio Programs

The Division of Air Pollution Control (DAPC) within OEPA is responsible for implementation and enforcement of all of Ohio's air programs. Much of DAPC's air program is carried out by its field offices, which include LAAs, who are not a part of OEPA. Each LAA signs yearly contracts with OEPA that commits it to conduct certain air implementation and enforcement activities consistent with OEPA's program. OEPA itself consists of the Central Office (CO), the Central District Office (CDO), the Northeast District Office (NEDO), the Northwest District Office (NWDO), the Southeast District Office (SEDO), and the Southwest District Office (SWDO). The following LAAs contract with DAPC: Akron Regional Air Quality Management District (RAWMD); Canton Department of Air Pollution Control (CDAPC); the Toledo Department of Public Utilities, Division of Environmental Services (TDES); the Portsmouth City Health Department, Air Pollution Unit (PLAA); the Hamilton County Department of Environmental Services (HCDOES); the Cleveland Department of Air Pollution Control (CLAA); and the Regional Air Pollution Control Authority (RAPCA). The North Ohio Valley Air Authority (NOVAA), which formerly contracted with OEPA, closed in 1997.

The U.S. EPA reviewers chose the field offices to be visited based both on the location of facilities mentioned in the petition and on past experiences with the offices. The enforcement reviewers visited the following Ohio offices: CO, Columbus; NWDO, Bowling Green; NEDO, Twinsburg; and HCDOES, Cincinnati. The permitting reviewers visited NWDO and NEDO. During their on-site visits, each office's management provided an overview of their air programs, then the reviewers examined facility-specific files and interviewed various OEPA staff and management personnel.

The U.S. EPA reviewers prepared fact-finding reports to document the information gathered during the on-site visits. The enforcement reviewers prepared "trip reports" for each Ohio office visited. Due to less complex issues and less material to review, the permitting reviewers prepared a more comprehensive and consolidated "administrative record" report which included findings from all of the on-site visits, a 1998 OEPA program review report, an in-house file review, and a summary of permit issues that have arisen in the past five years between U.S. EPA and OEPA. The offices visited were offered the opportunity to comment on all of these initial fact-finding documents.

As part of the review, U.S. EPA utilized data and information from a variety of sources in addition to information gathered during the site visits. These other sources, most of which were already in U.S. EPA's possession, included computer databases, previous fact-finding or State programmatic review documents, reports and records summarizing statewide data, and OEPA audit reports of its field offices. U.S. EPA also considered information presented by the petitioners through the petitions, as supplemented, and through affidavits submitted by citizens.

Finally, U.S. EPA did not limit its review to the precise issues and facilities raised in the petitions. To more holistically assess the effectiveness and adequacy of the OEPA air enforcement and permitting programs in meeting required criteria, U.S. EPA performed a broad

review of DAPC's programs. The period of time examined in the review generally spanned from October 1994 through October 2000, though U.S. EPA has included more recent data in some of its findings. U.S. EPA will either directly incorporate all relevant documents from this review into the administrative record or will summarize the relevant portions of those documents and incorporate the summaries into the administrative record.

On a final note, it was U.S. EPA's intent to focus on the work performed by OEPA and its field offices as they relate to federal requirements and regulations. For example, U.S. EPA reviewed records documenting OEPA's inspections of air pollution sources to determine if the facilities are meeting federal regulations. U.S. EPA, however, did not specifically look at how OEPA inspects sources subject to only State or local non-federally approved or delegated requirements. Where it was unclear whether information pertained to federal or state/local requirements, U.S. EPA attempted to consider that information as part of this review.

III. ALLEGATIONS

The petitioners have expressed a number of general and specific concerns about the air programs in Ohio as they are carried out by the OEPA and the LAAs. Although the petitioners only explicitly requested withdrawal of Ohio's Title V, NSR, PSD, Noncompliance penalties, and NSPS programs, their generalized concerns as expressed in the petitions go beyond the scope of these programs.

A. ENFORCEMENT

U.S. EPA has summarized the petitioners' generalized allegations regarding OEPA's air enforcement activities into the fourteen categories listed below. All of these allegations touch upon enforcement issues, and they have shaped U.S. EPA's review of enforcement under Ohio's various air programs. The petitioners' allegations are summarized as follows:

1. OEPA has failed to inspect and monitor activities subject to regulation.
2. OEPA has failed to take enforcement action and responds slowly when enforcement is needed.
3. OEPA has failed to seek adequate penalties.
4. OEPA has failed to apply MSS requirements.
5. OEPA has failed to identify sources subject to MACT.
6. OEPA has failed to verify the truth and accuracy of representations made by regulated entities.
7. OEPA has failed to properly apply environmental regulations.
8. The Audit Law prevents OEPA and local agency access to information needed to document violations.
9. OEPA is hostile to citizens.
10. OEPA excludes citizens from discussions between it and regulated entities.

11. OEPA subjects citizens seeking access to records to excessive copying charges.
12. OEPA accepts company representations as true while citizen complaints are subjected to complex procedures which reduce the likelihood a complaint will be investigated or verified.
13. The Audit Law denies citizens access to information because OEPA does not get the information from companies.
14. OEPA excludes citizens from having input into the enforcement process.

Please note that Enforcement Allegations #8 and 13 refer to Ohio's Audit Law. The air program reviewers in this review did not specifically evaluate the impact of the Audit Law on Ohio's legal authority to implement its federal air programs. As mentioned above, U.S. EPA has already denied the component of the petition that requested withdrawal based on legal authority allegations concerning the Audit Law.

B. PERMITTING

To shape the scope of its air permitting review, U.S. EPA focused on the following allegations expressed in the supplemented petitions:

1. OEPA has failed to correctly determine a facility's status as a MSS in nonattainment or PSD areas for purposes of Title V applicability.
2. OEPA has allowed construction of sources without a permit.
3. OEPA has failed to permit sources in a timely manner.
4. OEPA has failed to require Lowest Achievable Emission Rate (LAER) and offset reduction, and has failed to perform analyses of alternative sites for NSR source applicants.
5. OEPA has failed to correctly determine a facility's Hazardous Air Pollutant (HAP) emissions for purposes of Title V applicability.
6. OEPA has failed to be responsive to citizens or to make publicly available necessary information.
7. OEPA has failed to collect appropriate permitting fees under Title V.

In accordance with these allegations, U.S. EPA's air permitting review included an investigation of the adequacy of the number of permits being issued, the overall quality of the permitting process, and the adequacy of public input into the permitting process.

IV. WITHDRAWAL CRITERIA

U.S. EPA utilizes various legal avenues to transfer primacy in implementing federal Clean Air Act CAA programs to a state, including direct delegation of a federal regulatory program or approval of a state program. Each of these legal avenues has its own criteria and standards for approval or delegation, as well as for withdrawal, revocation, or other consequences of program inadequacies. In this section, U.S. EPA lays out the criteria for the five air programs the petitioners explicitly challenged: Title V, NSR, PSD, Noncompliance Penalties, and NSPS. U.S.

EPA has also reviewed two air programs that the petitioners did not explicitly seek to have withdrawn, namely Ohio's State Implementation Plan (SIP) and the National Emission Standards for Hazardous Air Pollutants (NESHAPS) programs.[1] Since withdrawal or revocation was not explicitly sought for these other two programs in the supplemented petition, U.S. EPA has not come to conclusions as to the commencement of withdrawal or revocation proceedings for these programs in this report. Nonetheless, U.S. EPA did review Ohio's implementation these programs because various of Ohio's other federal air programs, including its Title V permit program, were delegated or approved based, in part, on requirements laid out by those two programs. Additionally, to the extent that U.S. EPA has concerns with Ohio's NESHAPS program that parallel its concerns with the other two similarly delegated programs, the PSD and NSPS programs, it has combined those concerns to come to generalized recommendations pertaining to all three programs. On a final note, U.S. EPA will deal with certain concerns pertaining to Ohio's implementation of its approved SIP through mechanisms separate from this petition review.

The potential consequences for inadequate implementation vary from program to program. For example, the delegated NESHAPS, NSPS and PSD programs provide for "revocation" instead of "withdrawal." For the sake of simplicity in this report, U.S. EPA will generally consider the consequences of withdrawal and revocation to be synonymous. It is also important to note that Ohio has submitted a PSD SIP program for approval by U.S. EPA, and U.S. EPA has recently published in the Federal Register its draft conditional approval of the program for notice and comment. Once the PSD program is conditionally approved as part of Ohio's SIP, the PSD delegation may no longer be necessary, and therefore U.S. EPA will continue its review of the adequacy of Ohio's PSD program under the SIP regulatory framework. In the case of inadequacies for SIP approved programs, such as the NSR program or the PSD program, when and if it is conditionally approved, the consequences are different. Generally, those consequences include formal notices of deficiency by U.S. EPA, and the discretionary imposition of certain sanctions. A further consequence could be possible disapproval of the entire Ohio SIP, not just the deficient NSR or PSD portions. Withdrawal criteria are found in the regulations for some programs and described in agreements or delegation documents for others.

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[1]It should be noted that the NESHAPS program has two sets of federal regulations, both of which were promulgated pursuant to section 112 of the CAA. The NESHAPS standards found at 40 C.F.R. part 61 are health-based standards promulgated pursuant to the CAA Amendments of 1977. The NESHAPS standards found at 40 C.F.R. part 63 are based on control technology, not on health standards, and were promulgated pursuant to the CAA amendments of 1990. These latter regulations are typically called the Maximum Achievable Control Technology (MACT) standards, cover a much broader range of facilities than the original NESHAPS program. The MACT standards were delegated to Ohio on July 11, 2001, 66 Fed. Reg. 36173. Since this MACT delegation is so recent, U.S. EPA could not review Ohio's implementation of the program. U.S. EPA will be closely reviewing Ohio's implementation of the delegated MACT standards, however, to ensure that Ohio adequately and fully implements them in accordance with the delegation. U.S. EPA has reviewed OEPA's implementation of the MACT standards to the degree that OEPA has been required during the period under review to include MACT requirements in Title V permits.

For all five programs, it is necessary to compare the State's performance to a set of established criteria and standards that define the levels of minimum acceptable performance by the State in order to determine whether the State's program is adequate. These "programmatic" criteria are laid out by statutes, regulations, guidance and policy, and the State's own articulated performance commitments. These programmatic criteria vary for each of the reviewed air programs.

Below is a brief discussion of the nature of each federal program approved or delegated to Ohio, with the relevant programmatic criteria and the criteria for imposing consequences for program inadequacies.

A. PERMIT PROGRAMS (TITLE V); Title V, Section 502 of the CAA (40 C.F.R. Part 70)

1. *Background*

Title V creates a comprehensive state air quality permitting system where permitting authorities (typically, states or local agencies) issue comprehensive operating permits to major sources of air pollution and certain other facilities which incorporate all state and federal requirements that apply to the facilities under the CAA. Such requirements are known as "applicable requirements." Section 502 of the CAA and the regulations at 40 C.F.R. § 70.4 describe the minimum necessary elements of an operating permit program administered by a permitting authority in order for the program (also called a "Part 70 Program") to be approved by U.S. EPA. Ohio submitted its application for Title V approval on July 22, 1994, U.S. EPA approved the program on August 15, 1995, 60 Fed. Reg. 42045, and it became effective on October 1, 1995.

As further background, on December 11, 2000, U.S. EPA issued a Federal Register notice requesting comments on deficiencies in all fully or provisionally approved state Title V programs, including Ohio's program. This notice was issued pursuant to a settlement agreement entered into by U.S. EPA resolving claims brought against it by the Sierra Club and New York Public Interest Research Group (NYPIRG) alleging program and/or implementation deficiencies in various state Title V programs. 65 Fed. Reg. 77376-77 (December 11, 2000). Comments on the state Title V programs were due on March 12, 2001. U.S. EPA will address comments received on Ohio's Title V program as a result of the settlement and the December 11, 2000 Federal Register notice through the separate process laid out in the Federal Register notice rather than through the current review. As such, U.S. EPA may make further findings and/or refine its recommendations as this other review progresses.

2. *Withdrawal Criteria*

For Title V, the criteria for withdrawal and the withdrawal procedures are articulated in section 502(i) of the CAA and in the regulations at 40 C.F.R. § 70.10. Section 70.10(b) describes what

U.S. EPA must do if the state fails to administer or enforce its part 70 program and the state fails to make revisions under section 70.4(i). Under 40 C.F.R. § 70.10(c), U.S. EPA has the authority to withdraw approval of the state Title V program. Criteria for withdrawal include:

1) failure to exercise control over activities required to be regulated under Title V, including failure to issue permits. 40 C.F.R. § 70.10(c)(ii)(A).
2) repeated issuance of permits that do not conform to the requirements of Title V. 40 C.F.R. § 70.10(c)(ii)(B).
3) failure to comply with the public participation requirements of section 70.7(h). 40 C.F.R. § 70.10(c)(ii)(C).
4) failure to collect, retain, or allocate fee revenue consistent with § 70.9. 40 C.F.R. § 70.10(c)(ii)(D).
5) failure to act on any applications in a timely way for permits, including renewals and revisions. 40 C.F.R. § 70.10(c)(ii)(E).
6) failure to act on violations of permits or other program requirements. 40 C.F.R. § 70.10(c)(iii)(A).
7) failure to seek adequate enforcement penalties and fines and collect all assessed penalties and fines. 40 C.F.R. § 70.10(c)(iii)(B).
8) failure to inspect and monitor activities subject to regulation. 40 C.F.R. § 70.10(c)(iii)(C).

Pursuant to 40 C.F.R. § 70.4(i), if the U.S. EPA determines pursuant to section 70.10 that the state is not adequately administering the requirements of section 70.4, or that the state's program is inadequate in any other way, the state shall revise the program or its means of implementation to correct the inadequacy. Additionally, under the regulations at 40 C.F.R. § 70.10(b)(2), the U.S. EPA Administrator has the authority to a) withdraw approval of the program or the deficient portion of the program using the procedures laid out in 40 C.F.R. § 70.4(e); b) apply the sanctions outlined in section 179 of the CAA; and/or c) promulgate, administer, or enforce its own federal Title V program in a state that fails to take corrective action within 90 days after receiving a notice of deficiency determining that the state is not complying with the requirements of Title V.[2]

B. PREVENTION OF SIGNIFICANT DETERIORATION OF AIR QUALITY (PSD); Title I, Part C of the CAA

1. *Background*

Pursuant to section 110(a)(2)(C) of the CAA, each SIP adopted by a state must include a program to provide for regulation of the modification and construction of any stationary source

[2]Please note that the findings in this report, as explained later, are pre-decisional, and therefore do not constitute a notice of deficiency under the Title V regulations.

within the areas covered by the plan, including a permit program as required in parts C and D of Title I of the CAA. Generally speaking, part C of Title I of the CAA requires major sources in areas that are in attainment for the National Ambient Air Quality Standards (NAAQS) or are unclassified to get permits to prevent significant deterioration (PSD) of air quality. Ohio has not had an approved state PSD SIP program. In order to make sure such a requirement was in place for Ohio, the U.S. EPA approved federal PSD regulations found at 40 C.F.R. § 52.21 as a part of the Ohio SIP. 40 C.F.R. § 52.1884, 45 Fed. Reg. 52741 (August 7, 1980). The Regional Administrator, in accordance with his authority to take such action, directly delegated to OEPA his authority to implement the federal PSD regulations. 40 C.F.R. § 52.21(u). The delegation document is dated November 7, 1988, and contains the relevant programmatic and revocation criteria. The delegation document for the PSD program superseded the previous delegated authority given to OEPA on May 1, 1980.

Of recent interest, Ohio submitted a State PSD SIP program in April 1996. Due to various factors, including the review of the Audit Law, U.S. EPA did not review the submittal until recently. On June 29, 2001, U.S. EPA proposed to conditionally approve Ohio's PSD program as part of the Ohio SIP. Ohio's PSD program could get final conditional approval by U.S. EPA as early as August, 2001, after U.S. EPA has had a chance to review all of the comments submitted during the notice and comment period. At that point, the PSD delegation may will no longer be necessary since Ohio will have an approved PSD SIP program. Approval of Ohio's PSD SIP program is based on the criteria at 40 C.F.R. Part 51.

2. *Revocation Criteria and Deficient SIP Criteria*

Until the PSD delegation is officially revoked, U.S. EPA's focus for withdrawal will center on the delegation provisions. If Ohio's PSD program is conditionally approved as part of the Ohio SIP, and the PSD delegation is revoked, then the withdrawal review will shift its focus to whether Ohio has failed to implement its SIP or whether Ohio's SIP is deficient. Most of U.S. EPA's findings should be applicable to a review of program withdrawal or program inadequacy under either form of state primacy of the PSD program. As such, U.S. EPA will not specify in its findings the precise consequences if Ohio's PSD program is ultimately found to be inadequate. However, as will be highlighted in the report, a few findings can only apply to the withdrawal criteria of the delegated PSD program and not to the criteria of an eventual U.S. EPA-approved PSD SIP program, should that occur. Although certain concerns may lose some significance in regard to the withdrawal criteria once U.S. EPA approves Ohio's PSD SIP program, U.S. EPA plans to work with OEPA in other ways to ensure that these concerns are properly addressed.

In regard to the PSD delegation, Paragraph 2.c. of the delegation document requires that if the State enforces the delegated provisions in a manner inconsistent with the terms and conditions of the delegation or the CAA, U.S. EPA may exercise its enforcement authority with respect to sources within the State of Ohio subject to PSD. Paragraph 3 of the delegation document

notifies the State that the Regional Administrator may revoke the delegation in part or in whole, after consultation with OEPA, if he determines that the State is not implementing or enforcing the PSD program or has not implemented the requirements or guidance in respect to a specific permit. Paragraph 15 of the delegation document states that in the event the State is unwilling or unable to enforce a provision of the delegation with respect to a source subject to the PSD regulations, OEPA must immediately notify the Regional Administrator.

Under the regulatory provisions for SIP deficiencies or failure to implement a SIP, U.S. EPA can call for a SIP revision when it finds that the plan is substantially inadequate to attain or maintain the NAAQS or otherwise comply with the requirements of the CAA. 42 U.S.C. § 110(k)(5). The U.S. EPA must notify the state of the inadequacies and may establish reasonable deadlines, not to exceed 18 months after the date of notice, for the submission of plan revisions. The Administrator's findings and notice shall be public. Also, the Administrator can apply sanctions, as described in section 179 of the CAA and authorized by section 110(m) of the CAA, if the Administrator finds that any requirement of an approved plan (or approved part of a plan) is not being implemented. 42 U.S.C. § 7509(a)(4). Additionally, if circumstances warrant it, the Administrator could eventually disapprove a state's SIP in whole or in part, and establish a federal implementation plan (FIP) in its place.

Another provision that deals with a state's failure to administer the implementation plan is found in section 113(a)(2) of the CAA, which requires that when the U.S. EPA finds that violations of an applicable SIP are so widespread that such violations appear to result from a failure of the state to enforce the plan, the U.S. EPA must notify the state. If the Administrator finds that the failure extends more than 30 days beyond the notice to the state, the Administrator shall give public notice of such finding.

C. STANDARDS OF PERFORMANCE FOR NEW STATIONARY SOURCES (NSPS); Title I, Part A, Section 111 of the CAA (40 C.F.R. part 60)

1. *Background*

Section 111(c) of the CAA allows each state to develop and submit to U.S. EPA a procedure for implementing and enforcing standards of performance for new stationary sources located in the state. If the Regional Administrator finds that the state procedure is adequate, he shall delegate to the state his authority to implement and enforce those federal standards. NSPS standards are industry or facility based standards enacted through federal regulations and found at 40 C.F.R. part 60. OEPA requested that U.S. EPA delegate its authority to implement and enforce the NSPS program to Ohio, and the U.S. EPA granted that request. The most recent delegation document is dated June 1, 1988, and contains the relevant programmatic and revocation criteria.

2. *Revocation Criteria*

Paragraph 10 of the NSPS delegation document requires that the State notify the Regional Administrator if it determines that, for any reason, it is unable to administer the program with respect to any new or existing NSPS. Upon such notification, the primary responsibility for enforcing the NSPS would return to U.S. EPA. Paragraph 5 of the delegation document states that if, after appropriate discussion with OEPA, the Regional Administrator determines that an Ohio procedure for implementing and enforcing the NSPS is not in compliance with the federal regulations, or is not being carried out effectively, the delegation can be revoked in whole or in part.

D. PLAN REQUIREMENTS FOR NONATTAINMENT AREAS (NSR); Title I, Part D of the CAA

1. *Background*

Title I, part D of the CAA is entitled "Plan Requirements for Nonattainment Areas" and is also known as New Source Review for nonattainment areas. NSR is not a delegated program, but is supposed to be approved as a part of a state SIP. Pursuant to section 110(a)(2)(C) of the CAA, each plan adopted by a state has to include a program to provide for regulation of the modification and construction of any stationary source within the areas not in attainment for the NAAQS, including a permit program as required in parts C and D of Title I. 42 U.S.C. § 7410(a)(2)(C). U.S. EPA approved Ohio's initial NSR program as part of the Ohio SIP on April 15, 1974. U.S. EPA has also approved a number of amendments since then. 40 C.F.R. §52.1879.

2. *Deficient SIP Criteria*

Since Ohio's NSR program is part of its approved SIP, consequences for any failure by Ohio to implement or enforce its NSR program fall under the regulatory provisions for SIP deficiencies. These are the same provisions discussed under the deficient SIP criteria for PSD.

E. NONCOMPLIANCE PENALTIES; Title I, Part A, Section 120 of the CAA (40 C.F.R. Part 67)

Section 120 of the CAA requires the Administrator to promulgate regulations for assessing and collecting a noncompliance penalty against certain sources of air pollution that are not in compliance with emission limits. The purpose of the noncompliance penalty is to recover the economic benefit that a company has gained as a result of its noncompliance. Section 120(a)(1)(B)(i) of the CAA allows each state to develop and submit to the U.S. EPA a plan

for carrying out section 120 in the state. If the Administrator of the U.S. EPA, or the Administrator's delegatee, finds that the state plan is adequate, she can delegate to the state her authority to implement section 120. The programmatic criteria for delegation are found at 40 C.F.R. part 67.

Section 120 noncompliance penalties should not be confused with administrative, civil or criminal penalties assessed under section 113 of the CAA. U.S. EPA can find no evidence that Ohio ever submitted an application or request to U.S. EPA to administer the noncompliance penalty program. As such, it appears that the noncompliance penalty program has never been delegated to Ohio. To the degree that the petitioners highlighted this program due to their concern that OEPA is not adequately assessing penalties against violators, penalty authority is a required element of all the various delegated and approved State air programs and U.S. EPA examined the sufficiency of penalty assessments as part of its review of the other air programs.

V. EVALUATION

The discussion below is intended to summarize the review teams' findings, including summaries of the review of documents, interviews, and analysis of data.[3] Although U.S. EPA's assessment of Ohio's air program will consider both its permitting and enforcement aspects, this report presents the findings for these program components in separate sections since the permitting and enforcement branches conducted their reviews independently. Any determination that the Region makes will consider further information submitted by OEPA and input from the public gathered during the public review period, as well as evidence of efforts by OEPA to correct problems described in this report. As such, conclusions reached in this report are preliminary and pre-decisional in nature, and are subject to change before Region 5 issues a report recommending whether or not to initiate withdrawal and/or revocation proceedings.

A. ENFORCEMENT

While the enforcement reviewers geared their reviews to each allegation, this report organizes findings in relation to the programs being reviewed and the withdrawal or revocation criteria for each program. This enforcement section divides findings into two categories. The first category includes findings more serious in nature that will be considered when Region 5 assesses whether

[3]It is important to note that U.S. EPA's investigation was limited in many respects. U.S. EPA reviewers did not actually accompany OEPA inspectors "in the field" to observe their inspection practices. The reviewers did not participate in meetings or negotiations between OEPA and representatives of facilities subject to air pollution regulations. The reviewers did not accompany or observe OEPA staff as they responded to citizens complaints. With few exceptions, the reviewers did not try to duplicate the work done by OEPA to determine whether U.S. EPA would arrive at the same conclusions or results as OEPA or the LAAs. The review relied heavily on documents, data provided to U.S. EPA by OEPA that was not quality assured, and very limited interviews with OEPA and local air agency employees. That said, however, U.S. EPA reviewers have reviewed and considered a very large amount of information regarding OEPA's air programs.

the withdrawal criteria have been met. The second category of findings either are not so serious in nature that they could serve as a basis for commencement of withdrawal proceedings or do not relate to the withdrawal criteria, but still identify areas of concerns with OEPA's program. These latter findings, either singularly or collectively, could not warrant initiation of withdrawal or revocation proceedings, although they may suggest other corrective action by U.S. EPA if the identified concerns are not adequately addressed.

In regard to the petitioners' 14 summarized allegations as to Ohio's air enforcement program, Enforcement Allegations #10 (OEPA excludes citizens from discussions between it and regulated entities), #11 (OEPA subjects citizens seeking access to records to excessive copying charges), #12 (OEPA accepts company representations as true while citizen complaints are subjected to complex procedures which reduce the likelihood a complaint will be investigated or verified), and #14 (OEPA excludes citizens from having input into the enforcement process), even if well-founded, do not constitute grounds for withdrawal or revocation of a federally delegated or approved Ohio air program because they pertain to an area where Ohio has discretion in shaping its enforcement processes. The other allegations, namely Enforcement Allegations #1 (OEPA has failed to inspect and monitor activities subject to regulation), #2 (OEPA has failed to take enforcement action and responds slowly when enforcement is needed), #3 (OEPA has failed to seek adequate penalties), #4 (OEPA has failed to apply MSS requirements), #5 (OEPA has failed to identify sources subject to MACT), #6 (OEPA has failed to verify the truth and accuracy of representations made by regulated entities), #7 (OEPA has failed to properly apply environmental regulations), #8 (The Audit Law prevents OEPA and local agency access to information needed to document violations), #9 (OEPA is hostile to citizens), and #13 (The Audit Law denies citizens access to information because OEPA does not get the information from companies), if well-founded, are relevant to the question whether commencement of formal withdrawal proceedings is warranted.

The evidence for these preliminary findings was gathered by U.S. EPA as part of the review, gathered by OEPA during its own audits of district and local offices, including OEPA self-assessment reports submitted to U.S. EPA as part of its grant agreements with U.S. EPA[4], and gathered by other parties (such as the U.S. EPA Inspector General's office) or by Region 5 for purposes other than this review.

In conducting site visits, U.S. EPA enforcement reviewers visited four OEPA offices and LAAs, namely CO, NEDO, NWDO, and HCDOES, to talk with management, interview employees, and

[4] The information included in these reports was not gathered by OEPA for the purpose of responding to the petitioners' allegations. OEPA performs self-audits and self assessments as part of its routine activities. Although the OEPA was not performing those activities to respond to the citizens' petitions, the information OEPA gathered and the findings it made are useful in assessing the adequacy of the program to enforce air pollution regulations in Ohio.

review files.[5] Because the OEPA CO is not generally a location where complete case files are maintained, the results of the CO case file review were not considered to be representative of how OEPA maintains its files, but to the extent they contained relevant information, have been incorporated into U.S. EPA's findings. In regard to audits of district and local agency offices, the OEPA CO completed audits of Cleveland LAA in 1996 and 1999, NWDO in 1997, SWDO in 1998, TDES in 1998, and NOVAA in 1997. Finally, U.S. EPA reviewers found certain information gathered prior to or during this review at stakeholder meetings in Ohio to be useful. To get public input on Ohio's environmental programs, U.S. EPA Region 5 held stakeholder meetings in Toledo, Ohio, on April 22-23, 1997, and April 16, 1999, and in Cincinnati, Ohio, on February 10-11, 2000. A summary of the transcripts of these meetings can be found in the administrative record.

1. *Summary of Preliminary Findings Relevant to the Withdrawal or Revocation Criteria Generally Applicable to the Review of All of the Air Programs*

Before discussing U.S. EPA's preliminarily findings regarding the sufficiency of evidence to warrant commencement of withdrawal or revocation proceedings on a program-by-program basis, it is useful to summarize U.S. EPA's most relevant and serious preliminary factual findings arising from its review of OEPA's air enforcement program. Revoking or withdrawing a federally approved or delegated air program in its entirety requires serious deficiencies. In regard to the various delegated air programs, U.S. EPA also can alter, update, or revoke only portions of the delegated air programs in order to deal with more isolated concerns with those programs. Application of the withdrawal and revocation criteria also requires the weighing of the strengths and weaknesses of a state's implementation of the federal programs. It is unlikely that the criteria will be met if a state program has one small area of deficiency, but the rest of the program is run adequately. Therefore, where concerns are noted, U.S. EPA has attempted to discuss the gravity of those concerns, as well as put those concerns in context with trends in the rest of OEPA's air programs. U.S. EPA is presenting its preliminary findings in connection with the allegation under review.

a. Generalized Finding: Resources

[5]The files that were reviewed were facility specific files and, generally, the review team looked at files covering a five year period (1995-1999) for each facility. The files selected for review represented a wide range of facilities in order to provide a representative sample. The fact that the reviewers noted the presence or absence of particular information in the files should not be viewed as a definitive conclusion about the nature or quality of OEPA's enforcement work. Instead, the information gathered during the file review and interviews is information that will be used, along with other information, as a basis for the recommendations concerning potential program improvements and recommendations about commencing formal withdrawal or revocation proceedings. U.S. EPA reviewers interviewed OEPA and LAA employees at both the managerial and staff levels.

Although not specifically identified as a deficiency by petitioners in Enforcement Allegations #1-14, U.S. EPA's review addressed OEPA's level of resources to administer its federally approved or delegated CAA programs. 40 C.F.R. § 51.280 requires that the SIP submitted by a state include a description of resources available to the state and local agencies at the date of submission, as well as any additional resources needed to carry out the plan in subsequent years. Under the Title V regulations, 40 C.F.R. § 70.4(b)(8), all Title V operating permit plans submitted by a state must include a statement that adequate personnel and funding are available to administer and enforce the program. As highlighted by these commitments, one of U.S. EPA's biggest concerns about Ohio's air enforcement program is the adequacy of the resources provided to the agency. When OEPA first submitted its Title V program for approval in 1992, it estimated that DAPC would need 399 employees to run all of its air programs once the Title V program was in place. As of December 4, 2000, DAPC only had 222 employees on staff. Many of the problems noted by the U.S. EPA reviewers during this review may result from under-staffing. In other words, OEPA may lack sufficient resources to perform all of its permitting and enforcement duties. Even OEPA has recently indicated that it lacks resources. In the Environmental Performance Partnership Agreements (EnPPAs)[6] dated December 9, 1997, and July 1, 1998, OEPA indicated that, in order to meet its Title V permitting requirements, it would allocate more resources towards permitting and less towards enforcement and inspections.[7]

b. *Enforcement Allegation #1: Inspection and Monitoring*

U.S. EPA air enforcement reviewers looked at OEPA's inspection and monitoring program in reviewing Enforcement Allegation #1 (failure to inspect and monitor activities subject to regulation). OEPA's Title V projections for resource allocation, a required submission of its Title V operating permit program application, indicated it planned to perform annual inspections of all A-1, A-2, NSPS and NESHAPS sources covered by Title V.[8] Based on the information

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[6]An EnPPA, which is a voluntary agreement, often serves as both an instrument to define the partnership relationship between a state and U.S. EPA for the upcoming fiscal year and a vehicle for providing grant money to the state. An EnPPA lists environmental activities both U.S. EPA and a state agency will perform during the upcoming fiscal year.

[7]Though OEPA's reference to a grant agreement in its Title V program submittal may raise the concern that OEPA is using grant money to fund its Title V program, something not allowed by the Title V regulations, this is actually not the case. To ensure no commingling, OEPA has created a dual accounting system where it tracks all Title V and non-Title V expenses independently. Additionally, OEPA performs an audit every 3 years to track Title V fees and ensure no commingling. The latest audit was done in 2000, and a copy of the report is included in the administrative record.

[8]An A-1 source is defined as a stationary source of air pollution having actual or potential controlled emissions that are greater than 100 tons per year, in accordance with the definition set forth in the *Alabama Power* decision in 1980. See Alabama Power Co. v. Costle, 636 F.2d 323 (D.C. Cir. 1980). The key principle enunciated in *Alabama Power* is that the permitting authority consider actual or potential emissions after federally enforceable pollution controls are applied rather than before. By contrast, an A-2 source is a stationary source of air pollution

U.S. EPA reviewed, OEPA is not conducting annual inspections of all A-1, A-2, NSPS, and NESHAPS sources. In fact, U.S. EPA observed a downward trend in the number of OEPA inspections in each of these source categories over the past five years, with the greatest decline in A-1 source inspections, the class of the largest emission sources. In addition, OEPA referred to its section 105 grant agreements as the place where its Title V compliance tracking system would be defined. The basis for inspection commitments in past section 105 grant agreements was U.S. EPA's March 1980 "Inspection Frequency Guidance," which requires that the inspections conducted by OEPA be at least level 2 inspections.[9] Of concern, the file records that U.S. EPA reviewed did not show that OEPA is routinely conducting level 2 inspections at all facilities, when OEPA has committed itself, at a minimum, to consistently perform level 2 inspections.

As illustrated in the Figure 1, overall inspection numbers have dropped in Ohio in 1999 and 1998 from prior years. The 1999 inspection level of 7% of major, synthetic minor, and NESHAPS minor sources culminates a trend of decreasing numbers of inspections, and does not reflect OEPA's past commitments to "continuously inspect assigned manufacturing plants" and to "check compliance with permit system and variances in assigned industries." The most dramatic reduction in the number of inspections has occurred at NWDO and NEDO. This downtrend in inspection numbers likely results from DAPC's lack of adequate numbers of staff to maintain its various programs and its current focus on permitting rather than inspections and enforcement.

To OEPA's credit, however, it has implemented a very expansive and successful Continuous Emission Monitoring (CEM) program. Under a CEM program, a source continuously monitors its emissions, and then reports those emissions on a quarterly basis or when exceedances of permit limits occur. OEPA estimates that there are about 350 CEM systems installed at 260 facilities. It is unclear, however, how much the high number of CEMs mitigates the overall drop in inspections. Although a properly run CEM program can provide reliable, up-to-date emission information on the covered sources, Ohio has over 10,000 emissions sources. Therefore, the sources with CEMs represents a small minority of Ohio's overall number of regulated air sources. Additionally, a well run CEM program does not substitute for a well designed field inspection program for discovering violations.

c. Enforcement Allegations #1 and 2: Vacancies

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having actual emissions of less than 100 tons per year, but whose uncontrolled emissions would be greater than 100 tons per year (e.g., if the pollution control equipment were turned off or disconnected).

[9]Level 2 inspections of air sources must include, at a minimum, reviewing on-site documents and logs, recording relevant operating parameters of a facility, and observing and noting any visible emissions.

U.S. EPA's interviews with management and staff indicate that the time it takes for a new employee to become adept at enforcement work typically ranges from 1 to 2 years. Based on the records reviewed by U.S. EPA, vacant positions can have a dramatic impact on OEPA's ability to conduct a fully functional enforcement program. Over the past few years, DAPC has had a 10-20% vacancy rate at its various offices for all positions. In one of its audits of the Cleveland LAA, OEPA noted that longstanding problems associated with the field office's enforcement program were a direct reflection of the high degree of turnover of staff and management. As such, it is vital for OEPA and the LAAs to fill existing vacant positions and to retain trained experienced staff.

d. Enforcement Allegation #1: Training

A key element of any agency's ability to inspect facilities and take enforcement actions is the agency's training program for the employees who perform such work. A training program should provide regular training to employees so they can refresh and update their knowledge, skills, and abilities. Most new OEPA and LAA inspectors go through a program of training and attend telecourses or live courses related to the work they perform. Additionally, OEPA has an active mentoring program where more experienced staff are matched with new staff for training purposes. Nonetheless, the U.S. EPA permitting and enforcement reviewers found that OEPA's training was inconsistent from field office to field office, and that the lack of a standardized training material and a training program meant that staff were sometimes inadequately prepared for their duties, especially under the federally delegated and approved programs. Many of the OEPA employees interviewed stated that better training was important for them to be able to more adequately fulfill their job requirements. In response to field office audits showing inadequate training programs at these offices, DAPC committed in 1998 to define a training curriculum for all positions. For common positions, OEPA was to provide the curriculum to local air agencies to develop a training curriculum for LAA staff. OEPA has not yet developed this curriculum.

e. *Enforcement Allegation #2: Enforcement Activity*

In Enforcement Allegation #2, the petitioners questioned the adequacy of OEPA's enforcement activities, including the speed in responding to violators. The information in Figure 2-5 came from yearly reports prepared by OEPA. As background, a Director's Findings and Orders (F&O) is an Ohio administrative enforcement case conclusion. While not to the same degree as the number of inspections, the number of enforcement cases resolved (Fig. 3) has dropped in the past few years. However, the number of new cases (Fig. 2) has remained fairly steady.

It is difficult to draw broad conclusions from these overall enforcement numbers without looking at all factors at play. [Additionally, although the overall numbers demonstrate that OEPA does enforce its air programs in Ohio, OEPA's own audits of its districts and local agency offices found that there was unsatisfactory enforcement performance in parts of the state during the time period under review.]

f. Enforcement Allegation #3: Penalty Recovery

Enforcement Allegation #3 questions whether OEPA has been recovering adequate penalties. As a starting point, it is important to note that OEPA has committed itself in its past Environmental Performance Partnership Agreement (EnPPAs) and grant agreements to use U.S. EPA's Clean Air Act Civil Penalty Policy for all of its penalty calculations, and has confirmed the practice during the on-site visits of this review. As with other trends, Figure 6 shows an overall decrease in cumulative penalties[10] in the past few years, although not as pronounced as the drop in inspections. As with the other trends, it is difficult to make broad conclusions from these penalty figures alone.

U.S. EPA examined a number of penalty calculations performed by OEPA to evaluate whether they were performed using the CAA Penalty Policy. Although some penalty calculations were well done, the penalty calculations reviewed by U.S. EPA were not always consistent with each other or with the CAA Penalty Policy. OEPA appears to be applying different daily penalty amounts for similar cases and has not used the daily penalty adjustments laid out in the CAA Penalty Policy. Additionally, most of the penalty calculations did not consider or make use of the adjustment factors in the CAA Penalty Policy. In many cases, there was no calculation of economic benefit**.** Moreover, in various calculations, OEPA incorrectly figured the size of a violator to be equal to some percentage of its overall gross sales. Finally, OEPA did not cite a facility for multiple violations when such multiple violations were discovered for penalty purposes, except for the gravity component for duration of violation.

g. *Enforcement Allegation #4: Review of Applicability of PSD and NSR*

The petitioners have alleged that OEPA fails to properly apply Major Stationary Source requirements. Though the petitioners do not define what they mean by MSS, U.S. EPA interprets it to refer to sources defined as major sources under the various federal programs. For instance, the PSD and NSR requirements apply only to "major sources." Under the Title V

[10]The penalty amounts include both cash penalties and the value of "civil penalty credit projects." It should be noted that the penalty figures also include penalties collected for violations of TRI reporting requirements. The penalties collected in 1997 included $30,000 for TRI violations. The penalties collected in 1996 included $49,970 for TRI violations. The penalties collected in 1995 included $71,409 for violations of TRI requirements.

program, "major sources" are one category of regulated sources.[11] Many of the OEPA Title V permitting staff are the same staff who have worked with and inspected the permit applicants for many years. As such, U.S. EPA believes that most known (major source) requirements are being incorporated into Title V permits due to the intimate knowledge the OEPA permitting staff have regarding the permit applicants. Therefore, U.S. EPA's review under this Allegation focuses on major sources in the PSD/NSR programs, and OEPA's ability to identify unpermitted major sources. U.S. EPA earlier discussed its concerns as to potential deficiencies in OEPA's inspection program. If sources are not inspected, or not inspected thoroughly, modifications and new construction can be missed which means that applicable major source requirements may not be compiled with in a timely or proper manner. Furthermore, according to a recent Government Accounting Office report entitled "Air Pollution: EPA Should Improve Oversight of Emissions Reporting by Large Facilities," GAO-01-46, April 6, 2001 (GAO Report), routine inspections may not be enough to identify major modifications and new construction potentially triggering PSD/NSR applicability. OEPA currently conducts only routine inspections, and does not appear to employ more aggressive methods necessary to identify sources circumventing the PSD and NSR programs. U.S. EPA reviewers found no evidence that OEPA inspectors consistently review records and conduct other inspection activities that would reveal changes that which trigger PSD/NSR applicability. Additionally, OEPA has no guidance for staff on identifying unpermitted major sources. OEPA has stated that it relies on U.S. EPA guidance related to unpermitted major sources circumvention and that when a minor source inspection is performed, the inspector checks for new or modified emission units.

h. *Enforcement Allegation #6: Verification of Accuracy of Statements Made by Regulated Entities*

Petitioners' Allegation #6 alleges that OEPA fails to verify the truth and accuracy of representations made by regulated entities. The GAO Report found a very significant number of problems with the accuracy of information provided by companies to regulatory agencies. In prior section 105 grant agreements, OEPA has committed to review company reports submitted to show compliance with federal requirements. OEPA stated that it would review the reports for completeness, accuracy, and compliance. In its review, however, U.S. EPA found no evidence that OEPA inspectors or staff are routinely verifying the accuracy of reports submitted to OEPA. For example, OEPA inspectors rarely take samples of paints and coatings and instead rely heavily on the data supplied by the company. A QA/QC policy and manual for checking the accuracy, completeness and compliance of information supplied by a company could improve OEPA's performance in this area.

i. Enforcement Allegations #5, 7, 8, and 13

[11]Though these programs use the same term, "major source," its definition differs in the PSD/NSR context and the Title V context.

For Enforcement Allegations #5 (OEPA has failed to identify sources subject to MACT), #7 (OEPA has failed to properly apply environmental regulations), #8 (The audit privilege law prevents OEPA and local agency access to information needed to document violations), and #13 (The audit privilege law denies citizens access to information because OEPA does not get the information from companies), U.S. EPA reviewers did not find evidence of OEPA enforcement deficiencies which are significant enough to incorporate into its findings pertinent to the commencement of withdrawal or revocation proceedings at this preliminary stage. Enforcement Allegation #5 holds less relevance to this review. Since the U.S. EPA has only recently formally delegated the MACT standards to Ohio, U.S. EPA could not review how Ohio has implemented the program due to the short period of program primacy by Ohio. U.S. EPA will continue to observe Ohio's implementation of this program. The permitting reviewers did review the allegation under U.S. EPA's examination of Title V, however, since MACT requirements must be incorporated into all Title V permits. Enforcement Allegation #7 was largely dealt with in the discussion of Enforcement Allegations #4 and 6. Enforcement Allegations #8 and 13 touch upon the petitioners' concerns that the Audit Law has affected OEPA's implementation of its delegated and approved CAA programs. Because the Audit Law was recently changed, U.S. EPA did not evaluate the current law's impact on Ohio's programs.

2. Preliminary Application of Factual Findings to the Withdrawal Criteria of Each of the Programs

a. Title V

(1) Declining Inspection Numbers, Penalties Collected, and Enforcement Activity and OEPA's Training Program and Ability to Review Representations Made By Industry

One of the withdrawal criteria under Title V is failure to enforce the Title V program, including failure to act on violations, failure to seek adequate enforcement penalties, and failure to inspect and monitor activities subject to regulation. 40 C.F.R. § 70.10(c)(iii). As noted above, OEPA's overall inspection and enforcement numbers have been dropped in the past few years and OEPA's calculated penalties are not always consistent with one another. Additionally, the Title V regulations, 40 C.F.R. 70.4(b)(8), require that the operating permit plan submitted by the state include a statement that adequate personnel and funding are available to administer and enforce the program. When OEPA's DAPC first submitted its Title V program application, it estimated that it would need 399 employees once the program was fully implemented. Currently, OEPA's DAPC only employs 222 staff. Also, the recent drop in inspections, enforcement activity, collected penalties and the lack of a systematic employee training program or a system to review representations made by industry all impact the enforcement of Ohio's Title V program. Under Title V, all applicable requirements must be included in a Title V permit. Due to the recent trends in OEPA's enforcement activities, OEPA may be having difficulty identifying applicable

requirements not included in Title V applications by industry or may not be enforcing violations of those underlying applicable requirement programs prior to issuance of Title V permits.

While OEPA does need to make improvements to its Title V enforcement program, U.S. EPA does not believe the problems identified warrant initiation of withdrawal proceedings until the issues have been further reviewed. Most of DAPC's Title V enforcement problems at this point appear to result from a lack of personnel and a lack of resources. This report contains recommendations to ameliorate the programmatic enforcement concerns identified. If OEPA does not address these recommendations and its lack of resources continues to present a problem, U.S. EPA may find that these declining trends, in connection with the lack of systematic procedures for training its employees and reviewing industry representations, serve as a basis for commencement of withdrawal proceedings.

(2) Enforcement Allegation #1: Inspection, Monitoring and Enforcement Tracking Plans Under Title V

U.S. EPA is concerned that Ohio did not provide in its 1994 Title V program application of acceptable guidance on implementation of OEPA's Title V permitting program, including criteria for monitoring source compliance (e.g., inspection strategy). This submission was required under 40 C.F.R. § 70.4(b)(4)(ii), but was not submitted by OEPA. Under 40 C.F.R. § 70.4(b)(5), Ohio was also required to submit, in conjunction with its Title V program application, a complete description of its compliance tracking and enforcement program. To meet this requirement in that program application, OEPA referenced certain inspection and enforcement commitments laid out in its then existing section 105 grant agreement. However strong those past commitments were, this reference is not appropriate under the Title V regulations. First, those agreements have changed on a annual basis. For instance, for the current fiscal year (FY 2001), the two agencies are still negotiating a section 105 grant agreement, and the precise form of the future agreement, as well as its commitments, are still unclear. Second, it appears that some of commitments in the earlier agreements are no longer in accordance with OEPA's current Title V inspection and enforcement programs.

b. PSD

(1) Declining Inspection Numbers and Lack of Specific Procedures for Identifying unpermitted PSD Sources

U.S. EPA's review has preliminarily found that OEPA is functioning at inadequate levels, including identification of and enforcement against PSD sources. OEPA's low level of inspections and its lack of a comprehensive inspection system to identify PSD unpermitted PSD sources of the permitting system, i.e., a permitted source that performed activities that were subject to PSD requirements in the past but failed to comply with such requirements, concern U.S. EPA. Also, OEPA does not appear to have any program devoted to the detection of

facilities or sources not in the permitting system. The fact that U.S. EPA has independently identified various Ohio PSD sources in violation of the federal permitting and emission requirements in the past five years suggests that OEPA could have been more diligent in discovering PSD violators. Although these concerns alone may not warrant commencement of revocation or withdrawal proceedings at this point, they may rise to this level in the future if OEPA does not take steps to implement the recommended changes.

(2) OEPA's Reliance on Its Permitting System[12]

Under the PSD delegation, U.S. EPA's concerns as to OEPA's investigation and monitoring programs are augmented by the fact that OEPA is dependent on its permitting system to implement and enforce the PSD provisions. When U.S. EPA delegates a program, it actually delegates its authority to implement already-promulgated and effective federal regulations or federal regulations that will be promulgated in the future. OEPA accepted the delegation of the federal PSD program based on the premise that it would incorporate all relevant federal PSD requirements into State permits to install (PTIs or construction permits) or State permits to operate (PTOs), and would therefore implement and enforce the program through enforcement of the State's permitting provisions. It has historically been U.S. EPA's policy that this is an acceptable way for a state to implement a delegated federal program, although U.S. EPA's preferred method has been for a state either to legislate or promulgate parallel state laws or to incorporate by reference the delegated federal regulations into state law. Delegation through Ohio's permitting program presents a problem because OEPA cannot cite a source for violating PSD emission standards where the source submitted all relevant information in its application for a PTI or PTO, but OEPA did not identify it as a PSD source and excluded the relevant federal standards in the permit. In regard to PSD, however, U.S. EPA's concerns are mitigated somewhat by the fact that in 1996, OEPA promulgated its own PSD state laws,[13] which are very similar to U.S. EPA's PSD regulations. To the extent that the State PSD provisions are similar or identical to the federal PSD regulations, OEPA can now directly enforce the federal program without relying on the permitting process by citing those State regulations for PSD emission standard violations.

[12]If and when U.S. EPA conditionally approves Ohio's PSD SIP program, these concerns may no longer be significant in regard to the review of the adequacy of Ohio's PSD SIP program. As of that point, U.S. EPA will have deemed that Ohio has fully adequate state provisions, and therefore Ohio will have the authority to cite directly to its state regulations for all PSD violations and will no longer be reliant primarily on its permitting system to implement the PSD program.

[13]Ohio legislated these state laws as part of its efforts to get them approved by U.S. EPA as part of Ohio's SIP. As discussed earlier, U.S. EPA has recently issued a proposed conditional approval for Ohio's PSD program.

c. NSPS AND NESHAPS[14]

(1) Declining Inspection Numbers, Penalties Collected, and Enforcement Activity

Paragraph 10 of the NSPS delegation document allows U.S. EPA to revoke the program if Ohio's procedure for implementing and enforcing NSPS is not in compliance with the federal regulations or is not being carried out effectively. As with the PSD delegation, the NSPS and NESHAPS regulatory programs were delegated on the premise that they would be implemented and enforced through Ohio's PTI and PTO permitting program. As with PSD and Title V, U.S. EPA is concerned that OEPA's decline in inspection, investigation, and enforcement activity has made it difficult for OEPA to fully identify and prosecute NSPS and NESHAPS violators. In contrast to the delegated PSD program, Ohio has not legislated or promulgated similar or identical State NSPS or NESHAPS regulations. Therefore the State solely relies upon its permitting program to prosecute violators of the federally promulgated provisions. For this approach to be effective, OEPA must diligently investigate all permit applications to ensure that the applicable federal requirements are included, and inspect sources that are outside of the permitting world for applicability of the delegated program requirements. Because of the declining numbers of inspections, U.S. EPA is concerned that OEPA has not been diligent in including the applicable NSPS and NESHAPS provisions into all permits for facilities that fall under these regulatory programs. For the same reason, U.S. EPA is concerned that OEPA is not systemically identifying and inspecting sources which fall under these programs to bring them into the regulatory universe. In fact, OEPA has informed U.S. EPA that it does not have a specific program to identify NSPS sources which do not currently have permits.

(2) OEPA's Reliance on Its Permitting System and Permit Exemptions for Certain NSPS and NESHAPS Source Categories

Ohio appears to exempt from its PTI regulations two categories of NSPS and NESHAPS regulated sources. See Ohio Administrative Code 3745-31-03. Ohio law exempts "wood fuel-fired heaters" less than one million British thermal units per hour from the requirement to obtain a PTI, though U.S. EPA's NSPS for 'Performance for New Residential Wood Heaters' may apply to these sources. As such, Ohio may not be able to issue PTIs to certain sources subject to federal NSPS requirements, and therefore does not have the ability to enforce the applicable federal NSPS standards against those sources. Ohio's law also exempts certain asbestos removal activities from the PTI requirements, though these sources may otherwise fall under the regulatory scheme of the asbestos NESHAPS. Detrimental impacts from this PTI exemption to

[14]As previously stated, the petitioners did not directly seek revocation of Ohio's NESHAPS program. However, due to U.S. EPA's parallel concerns in the NSPS and NESHAPS programs, U.S. EPA has incorporated its findings on the NESHAPS program into the NSPS portion of this review.

OEPA's ability to enforce the asbestos NESHAPS are somewhat lessened, however, by the existence of state regulations similar to the federal NESHAPS requirements. Regardless, because of OEPA's inability to enforce the federal NESHAPS asbestos regulations for certain sources due to the PTI exemption, it has traditionally referred those asbestos removal NESHAPS violators who do not fall under state asbestos regulations to U.S. EPA for enforcement. Since Ohio relies on state operating and construction permits, U.S. EPA is concerned about the exemption from PTI requirements of certain sources that may fall under the NSPS and NESHAPS requirements. Ohio must explain how these permit exemptions do not hinder its ability to implement the federal NSPS and NESHAPS programs, commit to change its mechanism for implementing the NSPS and NESHAPS programs, or modify its regulations to remove PTI exemptions that could apply to NESHAPS and NSPS sources. U.S. EPA will continue to monitor OEPA's implementation of the delegated NSPS and NESHAPS programs.

(3) Municipal Solid Waste Landfills

The petitioners also raised concerns with respect to OEPA's regulation of municipal solid waste landfills. While the air enforcement reviewers have not specifically investigated the adequacy of OEPA's identification, permitting, and enforcement of NSPS regulated landfills, U.S. EPA has some concern, based on the decline of resources devoted to inspection, that OEPA may not be identifying and requiring appropriate NSPS air emission controls through PTIs for all landfills that fall under the federal NSPS regulations.

At this early fact-finding stage, U.S. EPA cannot make definitive conclusions as to the adequacy of OEPA's enforcement of its federally delegated NSPS and NESHAPS programs. OEPA has enforced the NSPS and NESHAPS standards in the past, as exemplified by the fact that, for at least one facility identified in the supplemented petitions, OEPA enforced the NSPS requirements.[15] Moreover, OEPA states that it reviews facilities during both inspections and permit reissuance for NSPS and NESHAPS applicability.

(4) OEPA Requests for Subdelegation of Delegated PSD, NSPS, and NESHAPS Programs to Field Offices

When OEPA submitted its SIP in the early 1970s, it indicated it would rely on a system of field offices to perform the source surveillance required by the Act. U.S. EPA delegated the NSPS, NESHAP, and PSD programs with the expectation that the field offices would play the same roles in Ohio that they played in source surveillance under the federally approved SIP. Ohio has identified its field offices as the primary offices to receive all requests, reports, applications, submittals, and other communications under the federal NSPS and NESHAPS programs. 40 C.F.R. § 61.04(b)(KK) (NESHAPS); 40 C.F.R. § 60.4(b)(KK) (NSPS). Also, the field offices

[15]OEPA issued an administrative enforcement order against Sun Company, Inc., in April of 1998 for violations of the NSPS standards.

generally perform all inspections within their jurisdiction under the delegated programs, and even have authority to bring certain types of enforcement actions without oversight from OEPA. As such, U.S. EPA finds that OEPA has subdelegated its duties under the various delegated programs to the field offices, even if OEPA classifies these relationships as merely "contractual." Of concern, the delegation documents require that before OEPA subdelegates the programs, it must get Region 5's approval for the subdelegation. Region 5 cannot locate in its files any requests from Ohio seeking approval for OEPA to subdelegate the delegated PSD, NSPS, and NESHAPS programs to the LAAs, although it appears that Ohio subdelegated its responsibilities to these offices. Also, OEPA recently informed its field offices that OEPA would be taking responsibility for inspection of asbestos abatement projects at sites owned by the same government entity implementing the program on a local level. OEPA did not inform or consult U.S. EPA before making this recent change to its subdelegation agreement with its field offices. Ohio must get prior approval from Region 5 prior to making any changes to its subdelegations, and therefore should seek Region 5's approval for this latest change.

(5) OEPA Reporting to U.S. EPA Under the Various Delegations

OEPA's delegation documents for NSPS, NESHAP, and PSD were issued by U.S. EPA with the expectation that OEPA would demonstrate it adequately inspects and monitors sources subject to federal regulations through either annual or quarterly reporting to U.S. EPA, depending on the delegation.[16] U.S. EPA found that OEPA was submitting some of the required information to U.S. EPA, but not necessarily as part of annual or quarterly reports. In many instances, the only way that U.S. EPA could review information required to be submitted under the delegations was by accessing OEPA's website to examine generalized emission data for a myriad of sources.

d. *NSR*

Section 110(k)(5) of the Act requires that the Administrator calls for SIP revisions whenever the Administrator finds that the applicable plan is substantially inadequate to attain or maintain the relevant NAAQS, or to otherwise comply with any requirement of the Act. Most of Ohio's

[16]Paragraph 6 of the NSPS delegation document and Paragraph 6 of the NESHAPS delegation document require OEPA to submit annual reports to Region 5 that include "information relating to the sources subject to" the two programs, including compliance, enforcement, and inspection information. The PSD delegation document of 1988 does not include all of the provisions found in the NESHAPS and NSPS delegation documents. For example, the PSD delegation document does not require Ohio to provide an annual report with compliance and enforcement information to U.S. EPA. Paragraph 12 of the delegation document, however, does include a requirement that OEPA report the compliance status on a continuing basis for sources that have received a PSD permit from either OEPA or U.S. EPA prior to the delegation. The PSD delegation document contemplated the use of the existing quarterly reporting system as a way to supply U.S. EPA with that information.

airsheds are currently in compliance with the NAAQS,[17] and because of this, Ohio has only issued 4 NSR permits in the past five years. U.S. EPA discovered nothing in its review of Ohio's air programs to suggest that Ohio is not adequately enforcing its federally approved NSR program in those limited nonattainment areas, partly due to the minor role that Ohio's NSR program currently plays in Ohio's overall air program.

e. Noncompliance Penalty Program

As noted above, since U.S. EPA never delegated to Ohio or independently approved Ohio to administer and enforce the noncompliance penalty program, U.S. EPA cannot withdraw delegation or approval of that program. To the degree that the petitioners sought withdrawal of this program because of their concerns as to the adequacy of penalties recovered by OEPA, U.S. EPA has reviewed penalties as a part of its review of the other programs.

3. Concerns of Issues Not Serious Enough to Provide a Basis for Commencement of Withdrawal Proceedings or Otherwise Not Relevant to the Withdrawal Criteria

Certain preliminary findings with respect to Ohio's air program are either not directly relevant to the withdrawal criteria, or if relevant, U.S. EPA believes that they cannot serve as a basis for withdrawal or revocation even if Ohio was to refuse to address them. U.S. EPA will provide the State with suggestions and recommendations to address such preliminary findings in a separate correspondence. U.S. EPA discusses these matters below.

a. Enforcement Allegation #9: Compliance with Procedures Included as Part of Ohio's Original Approved SIP Regarding Citizen Complaints

In regard to Enforcement Allegation #9 (OEPA is hostile to citizens), much of U.S. EPA's review focused on how OEPA handles citizen complaints. To comply with the requirements found at 40 C.F.R. § 51.212(a) and (b),[18] OEPA committed itself in its original SIP submittal to an ambient air monitoring network to monitor air quality, and to a source surveillance system that included: source identification and registration; permits to construct and operate; source inspections of fuel burning sources and industrial sources, 24-hour complaint investigations, the

[17]Once U.S. EPA's new ozone and particulate matter ambient air quality standards come into effect, many more airsheds in Ohio may be redesignated as nonattainment areas. This future change, however, is not relevant to whether Ohio has been properly implementing its approved NSR program until now.

[18]40 C.F.R. § 51.212(a) requires a state plan to provide for periodic testing and inspection of stationary sources. 40 C.F.R. § 51.212(b) requires a state to establish a system for detecting violations of any rules and regulations through the enforcement of appropriate visible emission limitations.

creation of a field patrol, and a system for answering public complaints. U.S. EPA only found one field office of the four reviewed that handles complaints on a 24-hour[19] basis, and none of the field offices have field patrols looking for visible emissions and otherwise carrying out OEPA's air programs. As a result, Ohio is not complying with approved SIP program requirements. Since the petitioners did not explicitly seek withdrawal of or sanctions for Ohio's failure to comply with its SIP, U.S. EPA has decided to address these deficiencies outside of the scope of this review.

b. Enforcement Allegations #9, 10 and 14: Mechanisms for Incorporation of Public Participation

Section 3704.033 of Ohio's Revised Code (ORC), which is part of Ohio's approved SIP, requires the Director of OEPA to provide measures to notify the public of NAAQS exceedances, to advise the public of the health hazards associated with air pollution, to enhance public awareness of the measures that can be taken to prevent exceedances of standards, to enhance public awareness of the ways in which the public can participate in regulatory and other efforts to improve air quality, and to satisfy public notice requirements of the federal CAA. A 1981 U.S. EPA policy on public participation also contains goals for incorporation of public input into implementation of federal air programs, even those delegated to states,[20] although this policy in no way displaces or supersedes the public participation requirements set forth in the CAA and in 40 C.F.R. part 70. Given the petitioners' concerns that citizens are shut out from participating in Ohio's regulatory programs, OEPA is strongly encouraged to fulfill the requirements of this State provision.

There is some indication that OEPA has attempted to incorporate public participation into its base air programs. One of OEPA's district offices, NEDO, noted that it has provided extensive training to all employees called "Quality Service through Partnership" (QStP). According to OEPA, the QStP training is designed to identify "customers" and treat all people that interact with the agency with respect and attempt to respond to their needs. Although the QStP training was not specifically designed for responding to citizens, the training would be applicable in responding to citizens complaints.

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[19]In regard to citizen complaints, HCDOES has a very aggressive program to respond to citizen complaints. In 1991, HCDOES established a 24-hour air quality hotline to respond to complaints. HCDOES believes its complaint response efforts may be extraordinary on a national basis and it is not aware of any other environmental agency that duplicates the 24-hour service. Calls that come in after normal business hours are directed to an answering machine and employees are automatically contacted by pager/beeper which lets them know a complaint has come in to HCDOES's answering machine.

[20]Under the policy, the Regional Administrator was responsible for evaluating compliance with public participation requirements in appropriate state and sub-state programs supported by U.S. EPA financial assistance and implementing federally delegated programs. Importantly, the 1981 policy is currently undergoing revision. One option under consideration is not requiring that state agencies be held to the U.S. EPA public participation policy.

c. Enforcement Allegations #10 and 14: Citizens Input into the Enforcement Process

In response to Enforcement Allegations #10 (OEPA excludes citizens from discussions between it and regulated entities) and #14 (OEPA excludes citizens from having input into the enforcement process), it must be recognized that many aspects of enforcement processes are confidential in nature, whether they be on a state or federal level. Due to the sensitive nature of settlement negotiations and the confidentiality accorded to them by law, such processes have traditionally not included citizen involvement.[21] Therefore, U.S. EPA cannot fault OEPA for any failure to incorporate public participation into its direct enforcement activities. Nevertheless, citizens have played a vital role in proposing and identifying Supplemental Environmental Projects (SEPs). A commitment by a settling party to finance a SEP can mitigate the amount of penalties the party would otherwise pay, and public input is an important factor in establishing appropriate SEPs. U.S. EPA's approach to public participation in enforcement processes is continually evolving as the Agency tries to make itself more accessible to the public. U.S. EPA hopes that OEPA joins it in this process of rethinking public participation in this traditionally non-public-participatory area of programmatic implementation.

d. *Enforcement Allegation #11: Copying Fees*

For Enforcement Allegation #11, U.S. EPA examined OEPA's fee policy for copies of documents. OEPA will copy the first 250 pages of a copy request for free and charge 5 cents per page for all copies thereafter. OEPA also informed U.S. EPA that its written policy on charges for copying is accessible at its website. U.S. EPA reviewers found the policy on OEPA's central district office websites at: <http://www.epa.state.oh.us/dist/cdo/admfile_review.htm>. This copy policy appears to be followed by all OEPA district and central offices. U.S. EPA, however, was unable to confirm that all of the LAAs follow OEPA's policy. In fact, the only evidence available to U.S. EPA suggests that some LAAs have not followed this policy. For example, U.S. EPA found that, until recently, HCDOES had been charging 25 cents per page for copies. Since this problem was noted by U.S. EPA, HCDOES has reduced its copying charges to 5 cents per page, in accordance with OEPA's policy. U.S. EPA lacks the authority under the CAA to require OEPA or the LAAs to comply with OEPA's fee policy. However, U.S. EPA recommends that OEPA and the LAAs make every attempt to comply with that policy.

e. *Enforcement Allegation #12: Investigations of Citizen's Complaints*

[21] An exception to the general exclusion of citizen involvement in enforcement actions and settlement negotiations is when a citizen group is a co-plaintiff or an intervenor in a state or federal enforcement action. In this situation, the citizens are involved in all settlement discussions, since they have their own claims to be resolved.

In regard to the portion of Enforcement Allegation #12 referring to acceptance as true of company representations, U.S. EPA found that OEPA often unduly relies on statements by companies in enforcement decisions, as discussed earlier. In regard to OEPA's alleged failure to investigate complaints, U.S. EPA reviewed trends for complaint investigations for the past few years. As can be seen from the Figure 7, the overall number of complaints investigated regarding air sources has significantly dropped in the past five years. This drop-off occurred across all categories of air sources, but has been slightly more pronounced for A-1 sources. The exact reason for the decline is unclear, therefore U.S. EPA cannot draw any conclusions from the trend. U.S. EPA reviewers also noted that the drop-off has been inconsistent from field office to field office, which makes it even harder to draw conclusions since the reasons for the drop-off may be field-office specific. Also, the decline may simply be caused by fewer complaints coming into the agency rather than any lack of diligence on the part of OEPA.

In regard to nature of complaints received by OEPA, U.S. EPA found that most of them were informal, rather than through the verified complaints procedures.[22] Any sort of communication to the agency by the public, including phone calls and all types of written correspondences, appear to be considered informal complaints by OEPA and the LAAs. U.S. EPA could find no evidence that OEPA has informed the public properly of the various ways to file complaints. U.S. EPA has some concern that the rigors of the verified complaint process may dissuade citizens from sending in verified complaints, and that OEPA may not take informal complaints as seriously as verified complaints.

Despite the noted problems, OEPA does have ongoing interaction with the public. OEPA reported that in 1998, it had handled 10,020 calls from the regulated community and 29,485 calls from the public, and participated in 532 meetings with the regulated community and 1,488 meetings with the public. However, it is very difficult to draw any conclusion as to the quality of that interaction from these raw numbers.

4. Other Identified Issues Not Related to the Allegations

In performing its review, U.S. EPA has made other preliminary findings not directly related to the allegations, as set forth below.

a. Availability of Emissions Data to the Public

[22]The verified complaint procedures, found at Ohio Administrative Code 3745.08, require a citizen to send a notarized complaint directly to OEPA's CO, rather than to the district offices. After the CO receives the complaint, the complaint is forwarded to the appropriate Enforcement Committee, which performs an investigation of the complaint. If there is enough evidence of a violation, OEPA will commence an enforcement action. OEPA often sets up a meeting between the complainant and an alleged violator, especially if the matter is being dealt with through a Findings and Order.

40 C.F.R. 51.116(c) requires that each state SIP provide for public availability of emission data reported by owners and operators or otherwise obtained by a state or local agency. The SIP must also provide for public availability of a correlation of the emission data with the applicable emission limitations. OEPA currently has a 1999 emission inventory available on its website. OEPA also provides access to the results of thousands of stack tests on its website. However, it does not appear that data from CEM monitors are available on the OEPA website. OEPA also makes its review of CEM reports submitted by companies a high priority. OEPA should make this information more available to the public.

b. Field Audits

OEPA has performed a number of field office audits throughout the years, although not as frequently as it would want or as U.S. EPA would suggest. During the six year period covered by U.S. EPA's review, most of the field offices in Ohio were not subject to a formal performance evaluation. Without routine audits of its field offices, it is difficult to ensure that Ohio is properly implementing its various delegated and approved programs.

B. PERMITTING

The permitting reviewers investigated issues pertaining specifically to Ohio's Title V, PSD, NSR, and NSPS permitting programs, as well as some broader OEPA programmatic issues affecting all of these programs. As background, Ohio issues three types of permits: PTIs, permits to operate PTOs, and Title V permits. PTIs are generally issued upon initial start-up of a source and are enforceable by U.S. EPA since they contain all applicable federal requirements. PTOs are renewed periodically, and are not generally federally enforceable. The Title V permitting program sets up a process whereby states issue permits that contain all relevant and applicable state and federal requirements under the CAA. Each Title V permit is bifurcated into federally enforceable and non-federally enforceable parts.

As with the enforcement findings, the air permit review preliminary findings are broken into two categories, those which potentially provide a basis for commencement of withdrawal or revocation proceedings if not properly addressed, and those which do not provide a basis for commencement of withdrawal or revocation proceedings, even if Ohio does not take the recommended corrective action. Unlike petitioners' allegations concerning OEPA's air enforcement program, all of the general allegations concerning OEPA's air permit program, if well-founded, would be relevant to the question of whether U.S. EPA should commence formal withdrawal or revocation proceedings. Therefore, whether or not a finding goes to withdrawal will depend entirely on the gravity of the problems identified. Relevant findings under U.S. EPA's review of the allegations are included in the discussions of each air program. U.S. EPA is not presenting any findings under Permitting Allegations #4 (OEPA has failed to require Lowest Achievable Emission Rate (LAER) and offset reduction, and has failed to perform analyses of alternative sites for New Source Review (NSR) source applicants) and # 7

(OEPA has failed to collect appropriate permitting fees under Title V), since it found no evidence of program inadequacies in regard to these Allegations.

In addition, as part of its discussion, U.S. EPA has pointed out areas where OEPA's program had previously been found to be deficient, but where OEPA had taken steps to fix the deficiency. U.S. EPA provides this information to highlight the improvements that OEPA has made to its program, and the willingness with which OEPA corrects problems once they are brought to its attention. As stated earlier, U.S. EPA is still in the fact-finding stage of its review. U.S. EPA will not determine whether or not commencement of formal withdrawal proceedings is warranted until after OEPA and the public have had a chance to comment on these preliminary findings.

1. Preliminary Findings Relevant to the Withdrawal Criteria and Preliminary Application of Findings to Those Criteria for Each Program

a. *Title V*

In regard to Ohio's Title V program, U.S. EPA permit reviewers investigated petitioners' Permitting Allegations #1 (OEPA has failed to correctly determine a facility's status as an MSS in nonattainment or PSD areas for purposes of Title V applicability), #3 (OEPA has failed to permit sources in a timely manner), #5 (OEPA has failed to correctly determine a facility's HAP emissions for purposes of Title V applicability) and #6 (OEPA has failed to be responsive to citizens or to make publicly available necessary information). This report first addresses Permitting Allegation #3, followed by a discussion of the findings under Permitting Allegations #1, 5 and 6. Permitting Allegation #2, which alleges that Ohio has inappropriately allowed construction of new sources without permits, is addressed below in the discussion of Ohio's NSR and PSD programs.

(1) Permitting Allegation #3: Permit Issuance Rate

40 C.F.R. § 70.4(b)(6) and section 503(c) of the CAA require that permitting authorities seeking approval of a Title V program show adequate authority and procedures to determine within 60 days of receipt whether Title V applications (including renewal applications) are complete, to request such other information as needed to process the application, and to take final action on complete applications within 18 months of the date of their submittal, except for initial permit applications, for which the permitting authority may take up to 3 years from the effective date of the program to take final action. The withdrawal criteria for Title V include failure to exercise control over activities required to be regulated under Title V, including failure to issue permits. 40 C.F.R. § 70.10(c)(ii)(A).

OEPA has been issuing Title V permits since 1996. Figure 8 shows, as of April 2001, OEPA

had issued final permits for only 30% of the 815 Title V permits applications it received. The CAA requires that all Title V permits were to be issued within three years of the effective date of the State's program. In Ohio's case, all Title V permits should have been issued by October 1, 1998. Though OEPA has not complied with the deadlines set out in the Title V regulations, it is important to note that only a handful of the approved states, and none from Region 5, have completed issuing their Title V permits. Also, as portrayed in Figure 9, OEPA has issued draft Title V permits for public comment for over 72% of the Title V applications received by the agency, and it has a plan in place to issue all Title V permits by December 31, 2001. Despite these mitigating facts, OEPA's issuance rate still falls well below the national average at this time, and U.S. EPA remains concerned about the low permit issuance rate in Ohio. These concerns will be largely alleviated, however, if Ohio can meet its December 31, 2001, commitment to issue all final Title V permits.

(2) Permitting Allegation #1 and 5: Title V Permit Deficiencies

Permitting Allegation #1 alleges that OEPA fails to incorporate MSS standards, and Permitting Allegation #5 alleges that OEPA fails to incorporate Hazardous Air Pollutant emission standards, such as NESHAPS and MACT, into Title V permits. As stated earlier, since petitioners do not define what they mean by MSS, U.S. EPA has interpreted the term to refer to sources defined as "major sources" under the various federal programs. U.S. EPA has grouped these allegations together since petitioners, by these allegations, appear to be questioning OEPA's ability to ensure inclusion of all applicable emission requirements in a Title V permit. The part 70 regulations clearly require that a source must identify all applicable emission limits and controls when it applies for a Title V permit. 40 C.F.R. § 70.5(c)(3) and (4). Generally speaking, the same OEPA personnel assigned to inspect a source and write the PTIs and PTOs are reassigned to review that source's Title V permit application and draft the Title V permit. Due to the nature of this system, U.S. EPA believes that OEPA is probably ensuring inclusion of all already-identified applicable requirements in each Title V permit. In regard to identifying inadequately permitted or controlled sources under Ohio's PTI and PTO programs at the Title V permitting stage, OEPA's effectiveness is more related to whether OEPA adequately inspects, monitors, and identifies sources circumventing applicable air requirements in Ohio. U.S. EPA has reviewed these issues elsewhere under Enforcement Allegations #1, 4, 5, 6 and 7. To the extent that Permitting Allegations #1 and 5 express petitioners' concerns that OEPA is failing to comply with Title V's procedural permitting requirements or failing to incorporate already identified applicable
requirements into Title V permits, U.S. EPA reviews these in the permitting section of the report.

(3) U.S. EPA's Review of Draft Title V Permits Issued by OEPA

U.S. EPA reviews about 10% of draft Title V permits to ensure that the permit was properly drafted, includes all of the necessary components, and captures all of the known emission standards applicable to the source. To date, U.S. EPA has not objected to any permits issued by OEPA. Although several issues have been serious concerns to U.S. EPA, OEPA has worked with U.S. EPA to resolve all of these concerns prior to issuing proposed or final Title V permits. These issues include the federal legal status of superseded construction permits (see letter dated May 18, 1998), Ohio's assertion that certain SIP regulations are state-enforceable only (see letter dated June 18, 1999), and the lack of a statement of basis in many Title V permits (see letter dated November 10, 1997). In regard to the superseding construction permit issue, OEPA was improperly including explicit language in Title V permits stating that the permit superseded or replaced specific construction permits, or PTI, conditions. OEPA and U.S. EPA have resolved the issue concerning the status of superseded construction permits because OEPA no longer includes superseding language in Title V permits. With respect to OEPA's initial reluctance to include Best Available Technology (BAT) control measures in the federally enforceable portion of the Title V permits, even though BAT is a requirement of Ohio's federally approved and enforceable SIP, OEPA has agreed to include BAT on the federally enforceable side of Title V permits. The final issue, the lack of a statement of basis, has also been resolved by OEPA agreeing to provide a statement of basis with each Title V draft permit.

(4) Adequacy of Statements of Basis

Although OEPA now provides statements of basis with all draft Title V permits, U.S. EPA is still concerned as to the adequacy of those statements of basis. 40 C.F.R. § 70.7 requires that a Title V permitting authority provide a statement that sets forth the legal and factual basis for all draft Title V permit conditions (including references to the applicable statutory or regulatory provisions). The permitting authority shall send this statement to U.S. EPA and to any other person who requests it. The purpose of the statement of basis is to document the reasoning behind the terms and conditions listed in the Title V permit. The statement of basis should also explain if certain rules apply to an emission unit, and if not, the reason for the non-applicability. U.S. EPA believes that the OEPA has not provided in its statements of basis proper technical background information or meaningful analysis of the applicability of certain terms and conditions, nor has OEPA addressed other important issues in the statement of basis, such as why numerous permits are being issued to a single source. U.S. EPA is concerned about the inadequacies of these statements, and if not properly addressed, OEPA's continued inclusion of inadequate statements of basis with draft Title V permits may rise to the level of commencement of withdrawal proceedings at a later date.

(5) Insignificant Emission Units

In Western States Petroleum Ass'n v. EPA, 87 F.3d 280 (9th Cir. 1996), the Ninth Circuit Court of Appeals found that all applications submitted under part 70 to permitting authorities by regulated entities must include information necessary to determine if an insignificant emission unit is subject to an applicable requirement, and those requirements applicable to an insignificant emission unit must be included in the Title V permit. U.S. EPA has reviewed OEPA's regulations for consistency with part 70. Currently, Ohio requires sources to submit insignificant emission unit information in all NSR permit applications. It is U.S. EPA's position, based on the WSPA ruling, that permitting authorities must require this information in Title V applications and permits where appropriate. In response, OEPA has committed itself to take steps to address this deficiency in the Title V application process by requiring all regulated entities to provide either an addendum to their Title V application, or to provide in all future renewals of Title V permits an emission activity form for insignificant emission units. See http://www.epa.state.oh.us/dapc/page/whatsnew.html (December 7, 2000 and February 22, 2001). In July 2001, U.S. EPA issued a letter to OEPA formally requesting a change to Ohio's regulations to no longer allow the exemption of insignificant emission units in Title V permit applications and permits. As such, Region 5 will continue to review of Ohio's program in regard to this issue.

(6) Acid Rain Rule Implementation

Though not directly alleged by petitioners, U.S. EPA investigated OEPA's incorporation and implementation of all necessary Title V programs as part of its Title V permitting program. U.S. EPA is concerned about OEPA's failure to create and implement an Acid Rain program as part of its Title V operating permit program. The Acid Rain Rule requires each state to submit to the Administrator for review and acceptance a state Acid Rain program which meets certain regulatory requirements. 40 C.F.R. § 72.71(a). The Acid Rain Rule is carried out in two phases. U.S. EPA has already carried out Phase I of the program, but states approved to administer and enforce a Title V program are responsible for administering and enforcing Acid Rain Phase II permits for all affected sources.[23] 40 C.F.R. § 72.73. The federal regulations require the Acid Rain requirements to be incorporated into applicable sources' Title V permits. States with Acid Rain programs approved by U.S. EPA as of December 31, 1997, were required to issue a Phase II Acid Rain permit for the affected units (other than opt-in sources) at each source by December 31, 1997. Title V permitting authorities, such as OEPA, were required to promulgate Phase II

[23]Title IV of the CAA sets out a regulatory program to reduce Acid Rain through control of sulphur dioxide (SO_2) and nitrogen oxides (NOx). Phase I of the SO_2 program began in 1995 and controlled SO_2 emissions at 445 units at 110 mostly coal-burning electric utility plants located in 21 Eastern and Midwestern states. Phase I of the NOx program began on January 1, 1996, and applied to two types of boilers. Approximately 170 boilers needed to comply with these NOx performance standards during Phase I. Phase I for both SO_2 and NOx emissions was carried out by U.S. EPA. Phase II of the SO_2 program, which began in the year 2000, tightened the annual SO_2 emissions limits imposed on the larger, higher emitting plants and also set restrictions on smaller, cleaner plants fired by coal, oil, and gas, encompassing over 2,000 units in all. Phase II of the NOx program also began in 2000, and set lower emission limits for Group 1 boilers, and established initial NOx emission limitations for Group 2 boilers.

NOx rules as part of the state's rules by October 1, 1997 (see "Acid Rain Guidance on Phase II Permitting, NOx, and Opt-ins" from the Acid Rain Division, signed August 29, 1995). States were required to issue Acid Rain permits that would take effect no later than January 1, 2000. Ohio has not submitted its Phase II Acid Rain program to U.S. EPA for approval. Moreover, it appears that Ohio has not enacted laws and OEPA has not promulgated rules to create the Acid Rain Program.

The withdrawal criteria found at 40 C.F.R. 70.10(c)(1)(I)(A) refer to a permitting authority's failure to promulgate or enact new authorities when necessary. U.S. EPA is concerned by OEPA's failure to implement an Acid Rain Program that meets the requirements of the CAA and U.S. EPA's implementing regulations. If OEPA does not submit Acid Rain regulations to U.S. EPA for approval within a reasonable time, and begin issuing Acid Rain permits shortly after U.S. EPA's approval of those regulations, U.S. EPA will find that OEPA's failure to timely implement this program is a basis for initiating withdrawal proceedings of Ohio's Title V program.

(7) Permitting Allegation #6: Public Participation Under CAA Title V

40 C.F.R. §70.7(h) and section 502(b)(6) of the CAA require that, except for modifications qualifying for minor permit modification and administrative amendment procedures, all Title V permit proceedings, including initial permit issuance, significant modifications, and renewals, shall provide adequate procedures for public notice, including offering an opportunity for public comment and a hearing. These regulations require that notice shall be given by publication in a newspaper of general circulation in the area where the source is located or in a state publication designed to give general public notice to persons on a mailing list developed by the permitting authority, including those who request in writing to be on the list, and by other means if necessary to assure adequate notice to the affected public. The notice shall have certain identifying characteristics, such as the name and address of the permittee and permitting authority, emissions data, all other material relevant to the permitting decision, and a description of the appeals process, to name a few. The permitting authority shall provide at least 30 days for public comment and shall give notice of any public hearing at least 30 days in advance of the hearing.

In a letter to the Sierra Club dated May 1, 1998, U.S. EPA addressed issues pertaining to OEPA's ability to provide adequate public participation under 70.7(h). OEPA provides public comment periods for all Title V permits and mails information pertaining to a particular facility when requested to do so by members of the public. OEPA posts all Title V permits on its website, and notices public comment periods for permits through a paid subscription of the Weekly Review.

OEPA has added the opportunity for the public to request a weekly e-mail list of all the Title V

permits being issued for public comment. Accordingly, U.S. EPA finds these portions of OEPA's program acceptable under the Title V regulations.

However, U.S. EPA has noted one ongoing problem with OEPA's compliance with the public participation requirements. OEPA has developed a Title V permitting system that requires electronic submittal of Title V application by regulated entities. If an application contains confidential business information, a second "sanitized" version of the application is required to be submitted for public use in order for OEPA to meet its public notice requirements. In most instances, applicants have not submitted a sanitized application. As a result, OEPA has not made available applications for public review for over four years in some of these cases. The withdrawal criteria for Title V include failure to comply with the public participation requirements of § 70.7(h) of the Title V regulations. 40 C.F.R. § 70.10(c)(1)(ii)(C). If OEPA does not commit to a plan which assures that the public has access to sanitized versions of Title V permit applications, OEPA's failure in this area may rise to the level of U.S. EPA recommending commencement of withdrawal proceedings under the Title V regulations.

b. PSD

The petitioners' Allegations #1 through 3, and 6 all apply to OEPA's PSD program. Namely, the petitioners have alleged that OEPA has failed to identify Major Stationary Sources (MSS) subject to PSD, allowed construction prior to permit issuance, failed to permit sources in a timely manner, and failed to make publicly available necessary information. As to Permitting Allegation #2, U.S. EPA did not identify any instances during its review of OEPA files where OEPA had improperly allowed a major source to commence construction without a PSD permit.

(1) Permitting Allegations #1, 2 and 3: Past Issues Regarding PSD Permitting

In regard to OEPA's overall process of and performance in issuing PSD and synthetic minor permits, which touch upon Permitting Allegations #1 and 3, Figures 10 and 11 show the number of recent synthetic minor and PSD permits issued by OEPA. These charts show that OEPA has consistently issued a number of both types of permits over the past five years.[24] In regard to Permitting Allegation #1, although the allegation explicitly refers to a failure to identify the status of sources in the context of Title V, U.S. EPA also examined OEPA's identification of sources and applicability determinations under PSD. In its review, U.S. EPA examined its own records to determine OEPA's past permitting performance under PSD. Over the past 5 years, U.S. EPA has reviewed the majority of PSD permits and at least 10% of the synthetic minor permits issued by OEPA. On a permit-by-permit basis, U.S. EPA has already informed OEPA of areas where U.S. EPA had concerns, such as the proper way to define a single source, the proper

[24]U.S. EPA recognizes that OEPA, although issuing PSD permits in increasing numbers, may not be identifying all facilities in Ohio subject to PSD. U.S. EPA has addressed its concern with OEPA's ability to discover unpermitted PSD Sources in the enforcement section of this report.

way to perform cost-benefit analysis, not performing top-down Best Available Control Technology (BACT) analysis, and other areas where U.S. EPA believed that OEPA was not following the PSD program requirements. In each case, these issues have been resolved prior to issuance of the final PTI. Currently, OEPA is properly including the standard modeling analysis in its PSD permits and has quickly and effectively responded to all of U.S. EPA's comments on PSD permits submitted to U.S. EPA for review. Because OEPA and U.S. EPA have resolved all past differences in regard to identification of PSD sources and applicability determinations under PSD, U.S. EPA finds no grounds for revocation or withdrawal under these allegations.

(2) Resolved Issues with Pro-Tec

The permitting issues pertaining to Pro-Tec demonstrate OEPA's past ability to work effectively with U.S. EPA on PSD permitting issues, and therefore present an important case study. In 1997, Pro-Tec Coating Company in Leipsic, Ohio, sought a synthetic minor NSR permit for a continuous steel galvanizing line. Once constructed, the new source would perform most of the finishing operations in the associated steelmaking process, such as trimming, shearing, in-line temper rolling, continuous annealing, alkaline cleansing, and hot-dip zinc coating. The source would consist of a recuperative natural gas-fired annealing furnace of 76.8 MMBtu/hr emitting 155 tons per year of NOx.

The permit sought to avoid PSD on the premise that its NOx emissions totaled less than the 250-ton-per-year threshold for PSD. Pro-Tec claimed that it was a finishing company and not a steel company, and that therefore the 100 TPY threshold for triggering PSD did not apply to the facility. Iron and steel mill plants are one of the 28 source categories whose PSD threshold is 100 tons per year rather than the 250 tons per year which applies to all other source categories. In a December 22, 1997, letter to OEPA, U.S. EPA determined that the source required a PSD permit**,** under the theory that the annealing furnace, which was the primary pollutant-generating unit at the facility, represented an iron and steel mill plant nested within the facility. U.S. EPA requested that OEPA require a PSD permit and BACT analysis for the annealing furnace, and OEPA complied with this request.

In this instance, U.S. EPA's intervention was helpful to ensure that Pro-Tec was properly permitted. It is important to note, however, that this was the first time since 1980 that U.S. EPA made the determination that a pollution generating unit within an otherwise minor source represented a nested 100-ton-per-year threshold source. Although the determination was complex and difficult, it was eventually resolved with OEPA's willingness and assistance and proved precedent-setting. Many other Regions and permitting agencies have since contacted Region V and OEPA to understand this concept of nested facilities.

(3) Permitting Allegation #3: Lack of Adequate Documentation in Files for Draft Synthetic Minor and PSD

Permits

OEPA's failure to maintain adequate documentation in permitting files has delayed U.S. EPA's review of draft permits. For instance, OEPA does not maintain important supporting documentation, such as calculations in synthetic minor permits files, which supports a facility's permitting claim or OEPA's permitting decision. As a consequence, when U.S. EPA reviews a permit, such as a PSD permit or a synthetic minor permit, and requires access to the file documents, such documentation is often lacking. At that point, U.S. EPA must ask OEPA for more information in order to properly review the permit, and this extra step results in delayed permit issuance.

For the reasons discussed above, although concerns were noted, U.S. EPA permit reviewers did not find sufficient grounds for initiating revocation or withdrawal proceedings based on Permitting Allegations #1, 2, or 3 for OEPA's PSD permitting program. The major concern was lack of adequate documentation in the file, which by itself, does not serve as a basis for the initiation of revocation or withdrawal proceedings.

(4) Permitting Allegation #6: Extension of Time to Comment on Draft PSD Permits

Lack of public participation is a major concern of the petitioners in regard to all of Ohio's programs. As previously discussed, U.S. EPA delegated the PSD federal regulatory program to OEPA to implement and enforce. Under the federal regulations found at 40 C.F.R. § 124.13, which is part of the federal regulatory PSD program, the public has 30 days to review and comment on draft permits, including comments on whether of the permit's issuance is appropriate, inclusion of certain conditions in the permit, or the agency's initial decision to approve or deny the permit application. Under 40 C.F.R. § 124.10, U.S. EPA, and in this case its delegatee OEPA, shall grant an extension of time for review and comment of a draft permit if the commenter who requests additional time demonstrates the need for such time.

OEPA failed to grant two formal, written requests by citizens for extending the 30-day public comment period for PSD permits. In both instances, the permits were substantially complex and controversial, and the public would have benefitted from an extended public comment period. The two requests pertained to BP Chemical (application nos. 03-1250 and 03-9943) PSD applications, and were made on October 16, 1998, and October 19, 1998. Because PSD applicability and control issues are generally complex and difficult to understand, the failure to respond to reasonable written requests for more time is a serious problem and potential impediment to public participation in the PSD permitting process. Given the small number of PSD permits issued by OEPA, its failure to grant extensions in these two instances indicates a

problem and may serve as a basis for commencement of revocation proceedings under the PSD

delegation if not properly addressed by OEPA. U.S. EPA strongly recommends that OEPA commit to allowing an appropriate extension of the comment period for complex permits.

Under the submitted Ohio PSD SIP program, no provision exists state equivalent to the federal regulatory requirement that provides for an extension of the 30-day comment period. Since OEPA is not required under any State SIP provision to allow for an extension of time, U.S. EPA could not commence withdrawal proceedings or assess sanctions for OEPA's failure to grant extensions of time to the public under a future approved PSD SIP. U.S. EPA still finds that it is important for the public to have adequate time to review and comment on complex PSD permits, and would request that OEPA use its discretionary authority to allow such extensions of time in appropriate circumstances.

(5) Permitting Allegation #6: Administrative Modifications

The concern that OEPA may be modifying permits administratively without providing proper public notice and comment goes to Permitting Allegation #6, namely that OEPA has failed to make publicly available necessary information. 40 C.F.R. § 124.2 defines draft PSD permits as a "document . . . indicating the Director's tentative decision to issue or deny, modify, revoke and reissue a 'permit". Director is defined as the Regional Administrator, or, when U.S. EPA has delegated the program, an authorized representative such as the state director. All draft permits, including a decision to modify an existing permit, must include a statement of basis, shall be based on the administrative record, and shall be publicly noticed and made available for public comment. 40 C.F.R. § 124.6.

The federal PSD regulations, which were delegated to Ohio to implement, do not contemplate the use of administrative modifications. The danger of administrative modifications is that the permitting authority does not include the public in the permitting process as required by the PSD regulations. Despite this, OEPA has made administrative modifications to PSD permits. Although administrative modifications may be appropriate to correct minor clerical errors that do not affect the source or its permitting requirements, Ohio has administratively modified permits to change actual substantive requirements in the permit. These administrative modifications include, but are not limited to: the replacement of compliance demonstration methods; elimination of permit limits; modification of emission factors; increase in capacity limits; modification of emission limits or standards, modification of operational restrictions, and addition of control devices and units. These past administrative modifications by OEPA were substantial enough to warrant a public comment period rather than administrative amendment. OEPA has said that it administratively modifies permits because of new testing data, typographical errors in the emission limitations, emission calculation errors, and expired regulations. Though administrative modifications may be appropriate for fixing typographical errors, any changes that substantively change the terms of the permit, especially emission limits, must undergo public review and comment. This concern is exacerbated when inappropriately modified NSR and PSD permit limits and requirements are subsequently incorporated into Title

V permits. U.S. EPA strongly recommends that OEPA curtail its use of administrative modifications for substantive portions of a permit.

Even under a SIP-incorporated PSD program, which utilizes Ohio's PTI process, OEPA is still improperly administratively modifying PSD permits. Ohio's regulations define an "action" as ". . . the issuance, denial, renewal, modification, or revocation of a . . . permit. . ." OAC 3745-47-03, which includes PTIs that contain PSD requirements. Ohio's regulations also state that "[a]ny person may submit written comments relating to a proposed action or a draft action. All comments received by the agency within thirty days after public notice, or such longer period as the public notice may specify, shall be considered prior to issuance of a final action." OAC 3745-47-05(F). The PTI regulations found at Ohio Administrative Code 3745-31-09 contemplate that public notice and comment period must be utilized for all permitting actions, including permit modifications. The rest of the analysis under Ohio's regulatory scheme concerning improperly administratively modified PSD permits parallels the analysis under the federal permitting regulations, and continues to suggest that Ohio is not properly utilizing its public participation provision for to PSD permits.

For the reasons discussed above, U.S. EPA permit reviewers found serious concerns under its review of Permitting Allegations #6. OEPA's current use of administrative modifications to PSD permits could rise to the level of commencement of withdrawal proceedings for both the delegated PSD program and the approved Title V program. For Title V, the withdrawal criteria include a permitting authority's "[r]epeated issuance of permits that do not conform to the requirements of [Part 70]." 40 C.F.R. § 70.10(c)(1)(ii)(B). Since, under the part 70 requirements, each part 70 permit must include the emission limitations and standards that assure compliance with all applicable requirements, OEPA's failure to comply with notice and comment requirements due to improper administrative modifications would be grounds for withdrawal. In order for these concerns not to form a basis for commencement of withdrawal or revocation proceedings in the future, OEPA must address them appropriately.

c. NSPS

U.S. EPA permitting reviewers did not specifically review OEPA permits for the adequacy of NSPS provisions. Moreover, OEPA's implementation of the NSPS is more an enforcement matter as to whether OEPA properly identifies NSPS sources which fall under the NSPS permitting program and requires them to get permits. U.S. EPA did seek information from OEPA as to NSPS determinations for 14 Title V applications. To date, OEPA has not provided this information.

d. NSR

42 U.S.C. § 7413(a)(2) states that when the Administrator finds that violations of a state SIP or state permit program are so widespread that such violations appear to result from a failure of the state to enforce the plan or permit program effectively, the Administrator shall notify the state, notify the public if the state doesn't take appropriate corrective action in 30-days, and may bring her own enforcement action when the state fails to do so. Moreover, section 179(a)(4) of the CAA, 42 U.S.C. § 7509(a)(4), states that if the Administrator finds that any requirement of an approved SIP is not being implemented, unless such deficiency has been corrected within 18 months after the finding of inadequacy, the Administrator shall apply one of the sanctions specified in the CAA.

In its review of Ohio's NSR program for nonattainment areas, U.S. EPA did not find any areas of major concern in regard to permitting. Moreover, Ohio is currently attaining the NAAQS with the exception of a few small areas which are not in attainment with the sulfur dioxide and particulate matter of 10 microns or less standards. As stated in the enforcement section, because of the limited scope of Ohio's NSR program compared to other areas of its program, it was difficult to review the program and any deficiency in that program, in and of itself, would probably not constitute grounds for commencement of withdrawal proceedings. Nevertheless, U.S. EPA's review disclosed no evidence of any failure to administer properly the federally approved NSR program in nonattainment areas.

2. *Concerns of Issues Not Serious Enough to Provide a Basis for Commencement of Withdrawal Proceedings or Otherwise Not Relevant to the Withdrawal Criteria*

Certain concerns found with Ohio's air permitting program are either not directly relevant to the withdrawal criteria, or if those concerns are relevant, U.S. EPA believes they cannot serve as a basis for withdrawal or revocation even if Ohio were not to address them. As to some of these concerns, U.S. EPA still believes that Ohio needs to address them, and may take actions other than withdrawal or revocation if these concerns are not addressed. Many of the concerns do not directly relate to the allegations, but rather are areas of potential improvement that U.S. EPA discovered during its review.

a. Title V Areas of Concern

(1) Credible Evidence Language

U.S. EPA has previously raised concerns with OEPA regarding language included in Title V permits (see letters dated October 30, 1998, and December 28, 1998) that could be construed to limit the use of credible evidence. Both case-law and the federal part 70 regulations support the use of credible evidence in determining a facility's compliance with Title V and Title V permits. The use of credible evidence allows consideration of information gathered from a variety of

sources, not just stack tests or required monitoring, by regulated entities, regulatory agencies, and others in determining a source's compliance with CAA requirements and permit conditions. OEPA has taken steps to correct this problem by adding boilerplate language to its Title V permits stating that permitting language in no way limit the lawful use of credible evidence.

(2) Application of Non-Approved SIP Provisions

In certain draft Title V permits, OEPA has incorporated proposed SIP provisions into the federally enforceable side of the permit before to those provisions are approved by U.S. EPA. For example, in the Wausau-Mosinee Paper Corporation draft Title V permit, OEPA incorporated on the federally enforceable side of the permit a state provision, OAC 3745-18-03(c)(6)(b)(x), prior to U.S. EPA's approval to Ohio to incorporate that provision into Ohio's SIP. This is not an acceptable practice, and is inconsistent with the Title V requirements. When notified of this practice on particular permits, OEPA remedied the problem by removing the unapproved provisions from the federally enforceable section of the Title V permits.

(3) *Failure to Issue State Operating Permits Prior to Title V Draft Permit Issuance*

Prior to approval of Ohio's Title V program, Ohio's approved SIP required all sources to get a PTO. Ohio sources were required to submit Title V applications starting on October 1, 1995. Under the part 70 program, once a facility had submitted a Title V permit, it received an application shield against enforcement actions claiming a failure to have a PTO. The shield protects those sources who failed to get a PTO after the October 1, 1995, Title V application deadline and not sources without a PTO prior to the deadline. During U.S. EPA's file review, U.S. EPA reviewers found various instances where sources did not have PTOs leading up to the October 1, 1995, application deadline, and no evidence of enforcement on the part of OEPA.

b. General Lack of Documentation

(1) Emission and Monitoring Reports

The permit files that U.S. EPA reviewed generally lacked documentation of OEPA's decisionmaking process. Despite the fact that permits generally require that emission and monitoring reports be submitted on an annual basis, many of the files did not contain such reports. The lack of emission and monitoring reports may also be impeding OEPA's ability to properly regulate and enforce against emission sources in Ohio. Emission and monitoring reports are useful in determining a source's compliance. Without these reports, it is harder to determine compliance.

(2) Technical Documentation

In addition, most of the files reviewed by U.S. EPA permitting reviewers lacked certain technical documentation, information, or analyses supporting the final requirements and terms incorporated into a PTI. The files also generally lacked responses to citizen comments included in the documentation.

c. Training

As discussed in the enforcement section of this report, OEPA has an informal training program. OEPA relies on experienced staff to mentor newer staff and individual conference calls with the central office and the district and local offices. Over-reliance on an informal training program does not engender consistency. To that end, U.S. EPA recommends that OEPA's training regimen foster consistency in implementation of its CAA programs between the district and local offices. To OEPA's credit, U.S. EPA notes that OEPA's Title V program guidance documents, such as the engineering guides, help promote consistency. Indeed, the Ohio air program has almost a 30-year history of issuing engineering and program guidance that is both helpful to the regulated community and to OEPA and field office employees in consistently applying Ohio's air laws and regulations. In some areas of regulation, though, such as the definition of BAT in Ohio's rules, OEPA has not issued guidance documents to the district or local offices. In the BAT example, without state guidance as to how to apply BAT, there is potential for great variability among the various offices.

d. *Possible Undue Reliance on AP-42*

AP-42 is a set of industry standards that uses average emissions for an industry class to establish a rough initial mechanism to determine a source's emission rate. The Introduction to AP-42, Fifth Edition, Volume I, states "Use of [the AP-42] factors as source-specific permit limits and/or as emission regulation compliance determinations is not recommended by EPA. Because emission factors essentially represent an average of a range of emission rates, approximately half of the subject sources will have emission rates greater than the emission factor and the other half will have emission rates less than the factor. As such, a permit limit using an AP-42 emission factor would result in half of the sources being in noncompliance." Moreover, each industry class may contain a variety of emission units within that class, which further makes AP-42 unreliable for permitting purposes. For the foregoing reasons, and based upon review of OEPA's files, U.S. EPA is concerned by OEPA's undue reliance, such as in the tons per year calculations, on the AP-42 factors in permitting decisions.

e. Communication About Hearings

The federal regulations for the various air programs do not describe precisely how to inform the public of a public hearing, though they do provide some guidance at 40 C.F.R. 70.7(h), at least in regard to Title V. Due to the concerns as to public participation raised by the petitioners, U.S. EPA believes that OEPA should pay special attention to directly informing interested parties of a hearing in a timely fashion, as well as providing all relevant documentation, so that the public has the chance to prepare and ask questions prior to the hearing.

f. Public Comments on Permits

As stated elsewhere, the public only has a 30-day period to review and comment on certain OEPA actions, such as final permit decisions. Both the PSD regulations, 40 C.F.R. § 124.13, and the Title V regulations, 40 C.F.R. § 70.7(h), allow for this notice and comment period. However, part of the requirement for notice and comment is that the public have full access to the relevant documents relied upon by OEPA in making its decision during this 30-day period. U.S. EPA reviewers found on some of OEPA's district office websites, such as for the central district office, that OEPA requires "a minimum of two weeks . . . to gather the files and schedule a room" for a file review. http://www.epa.state.oh.us/dist/cdo/admfile_review.htm. U.S. EPA is concerned that OEPA's practice of requiring two weeks notice prior to a member of the public being allowed access to OEPA's files is limiting the ability of the public to adequately and fully review permitting decisions in the allotted 30 days. U.S. EPA seeks further clarification from OEPA on this issue as to whether the public is provided with all relevant information and documents necessary for their review and comment for the full 30-day period.

VI. RECOMMENDATIONS

Although U.S. EPA is still in its fact-gathering and preliminary determination stages, the agency is able to identify areas of concern that need immediate attention from OEPA. OEPA's commitment to address these concerns now, in accordance with the following recommendations, should obviate any need on the part of Region 5 to recommend the commencement of withdrawal or revocation proceedings. The following recommendations pertain to those identified concerns that bear directly on the withdrawal and revocation criteria, and as such, should be a priority for OEPA in regard to undertaking corrective action to improve its program. Suggestions and recommendations that do not pertain to concerns bearing directly on withdrawal or revocation criteria will be conveyed separately.

A. *Resources*

The State of Ohio must allocate sufficient resources to DAPC to meet its programmatic requirements under the various approved and delegated programs. U.S. EPA has noted recent downtrends in OEPA's air permitting, inspection, complaint response, monitoring, and enforcement performance levels, and these downtrends appear to be related to a lack of resources

on the part of DAPC. The downtrend in many of these areas is of great concern to U.S. EPA, and absent a commitment by Ohio to reverse this trend, may become a basis for withdrawal or revocation of all of Ohio's delegated or approved programs in the future.

B. *Public Participation*

U.S. EPA recommends that OEPA better define both the public's role in its regulatory process and how to incorporate public input into that process. Ohio's approved SIP (found at ORC § 3704.033) and Title V (found at 40 C.F.R. 70.7(h)) programs require a certain level of public participation and a clear statement by OEPA of its public participation strategy. Indeed, one of the petitioners' primary concerns appears to be OEPA's reluctance to define or create avenues for the public to participate in its regulatory and enforcement processes. In order to ensure that any shortcoming in the realm of public participation does not rise to the level of initiation of withdrawal or revocation proceedings under the various petitioned programs, and in order to better work with its citizens, U.S. EPA recommends the following steps as a potential approach to improve public participation in OEPA's regulatory programs:

1. Region 5 and OEPA should discuss the possibility of developing an interagency agreement regarding public participation in enforcement matters. Such an agreement could be part of the NEPPS process, and would recognize that both U.S. EPA and OEPA can do a better job at including public participation their base enforcement programs.

2. U.S. EPA recommends that OEPA reexamine and potentially revise its policies, guidance, strategies, and practices regarding public involvement in the enforcement and permitting processes. At the time of this review, the current position of OEPA regarding public input and participation in the OEPA regulatory processes has not been clearly defined in any publicly available document. As a potential solution, OEPA could develop and make publicly available a strategy document for public input into its regulatory programs, including the air programs. U.S. EPA recommends that this document lay out, among other things, the process for inclusion of public input into how OEPA targets facilities for enforcement, how industry and citizens are recognized for their contributions, and how OEPA allocates its resources. Also, this document could serve as a vehicle to demonstrate how OEPA is meeting its public participation goals under its Title V and SIP programs. Finally, U.S. EPA suggests that OEPA make any document developed pursuant to this recommendation clearly and easily accessible to the public, such as being posted on OEPA's website.

3. In developing its public participation strategy for its air program, U.S. EPA recommends that OEPA conduct more public surveys so that OEPA is fully aware of citizens' concerns. Such input from the public will be vital in defining the public participation strategy.

4. OEPA may want to consider the creation of an ombudsmen similar to the one utilized by U.S. EPA. Although not without its controversial aspects, a State ombudsman would give the public a venue to address their concerns other than to the U.S. EPA.

5. U.S. EPA recommends that OEPA improve the process by which it addresses citizens complaints (for example, in the instance of municipal solid waste landfills where significant air pollution sources have been alleged) and educates citizens as to its complaint process, including written guidance on the differences between a verified complaint and an informal complaint. This could be a part of the public participation strategy document described above, or could be an independent document. Such guidance should be made clearly and easily accessible to the public, most likely on OEPA's website. U.S. EPA also recommends that OEPA, after improving and better defining how it deals with citizen complaints, ensures that this approach is adopted universally by its field offices to create state-wide consistency.

6. It appears that DAPC has not well publicized its many enforcement accomplishments or the large amount of work done by its field offices in responding to citizen inquiries and complaints. OEPA needs to better publicize its accomplishments to receive full credit for the work that it has performed.

7. Although not as pressing as some of the other recommendations, DAPC may want to consider more open house activities and more participation in public events where it could alert the public as to the potential for public participation in its regulatory and enforcement programs. Again, the mechanism for such events could be incorporated into a new public participation strategy document.

8. OEPA should consider making CEM data and its reviews of those data available to the public on its website. The emission data generated through the use of CEMs would provide citizens with much better and more timely information about the actual emissions from facilities in their community.

9. U.S. EPA seeks clarification from OEPA as to how it ensures that the public is allowed the full 30 days for notice and comment of PSD and Title V permitting decisions. Such notice and comments includes full access to all underlying documentation upon which the agency relied in making its decision. To the extent that OEPA's policy of requiring two weeks notice before a member of the public can review agency files conflicts with the ability of the public to fully and adequately utilize the 30-day notice and comment period for PSD and Title V permitting decisions, U.S. EPA recommends that OEPA make appropriate changes to its file access practices to ensure the public's right to the full 30-day review of an applicable permitting file.

C. Title V Permitting

U.S. EPA remains concerned about the implementation of Ohio's Title V permitting program. Though U.S. EPA is still investigating the Title V issues, and is not yet ready to make a final determination, OEPA could help address U.S. EPA's concerns if it implements the following recommendations:

1. In regard to OEPA's Title V permit issuance rate, U.S. EPA hopes that OEPA can complete final issuance of all final Title V permits, with monthly milestones, by December 31, 2001, as is the agency's current plan. Any further commitment to U.S. EPA that OEPA will meet this schedule will help alleviate U.S. EPA's concerns.

2. In regard to the Title V statements of basis, U.S. EPA recommends that OEPA include comprehensive statements with each Title V Draft Permit, including all required regulatory information. In particular, OEPA should include appropriate analysis of the decisions made for each term and condition, as well as those conditions which were streamlined or deemed non-applicable to the source. Also, OEPA should provide a clear rationale for the selected monitoring method, as required by 40 C.F.R. § 70.7(a)(5) and the Ft. James Camus Mill order.

3. In regard to the Acid Rain Phase II program, OEPA must develop and submit to U.S. EPA its Acid Rain regulations for approval within a reasonable time. In addition, OEPA should concurrently submit a plan, with timeframes, which commits the agency to expeditiously issue Phase II permits under the state regulations, once approved.

4. It is vital that OEPA obtain sanitized Title V permit applications from applicants. Within a reasonable time, OEPA must obtain sanitized

versions of all claimed confidential Title V applications where a draft or final Title V permit has not yet been issued. For all future activity, U.S. EPA also recommends that OEPA deem all Title V permit applications which contain confidential business information, but are not accompanied by a public version of the application, as incomplete until such time as a public version is submitted.

5. In accordance with the WSPA ruling, U.S. EPA requests that OEPA make the necessary changes to its Title V regulations to no longer allow the exemption of insignificant emission units from Title V applications and permits.

6. U.S. EPA recognizes that OEPA may have issued various Title V permits in either draft or final form that may have defects, such as BAT requirements being on the State-side only, non-inclusion of certain insignificant emission units that should be controlled, incorporation of terms from improperly administratively modified PSD permits, incorporation of improper language in regard to the supersession of underlying PTI terms and conditions, and inclusion of SIP exemptions which have not yet been approved by U.S. EPA as part of Ohio's SIP. After a careful review of how to deal with these defects, U.S. EPA has determined that greater environmental benefit will result from OEPA focusing its immediate Title V permitting efforts on final issuance of draft Title V permits rather than on reviewing and modifying already issued Title V permits to fix these sometime minor defects. This time allowance is premised on the fact that OEPA must make all necessary changes to clear these potential permitting defects at the five year renewal period for each Title V permit. Any failure by OEPA to clear these defects upon permit renewal would constitute grounds for a Notice of Deficiency or commencement or withdrawal proceedings.

U.S. EPA reserves its rights, in accordance with the continuing review of Ohio's Title V permitting program, to notify OEPA of further suggested program changes to ensure that Ohio's Title V program complies with federal CAA requirements.

D. *PSD Permitting*

1. For complicated PSD permits, 30 days is rarely enough time for the public to review the application in order to make substantive comments, especially since it often takes a week or more for citizens to have access to the OEPA files containing all of the relevant information. U.S. EPA is seeking a commitment from OEPA that it will ensure that the public has

adequate time and access to OEPA files in order to give meaningful opportunity for comment. In particular, U.S. EPA would like OEPA to submit a copy of the criteria OEPA uses for granting or denying requests for extension of time and how OEPA notifies the extension requestor of the reasons for a denial. U.S. EPA suggests that any actions under this recommendation should be incorporated into whatever public participation strategy document is drafted pursuant to Recommendation #2, above.

2. U.S. EPA recommends that OEPA discontinue its use of administrative amendments for any significant, substantive changes to PSD permits. Though past amendments may have made permits more accurate and up-to-date, some of them should have been done with formal notice and comment rather than administratively when they significantly affected a sources's substantive obligations.

E. PSD Inspections

A suggested program improvement is that OEPA establish a more formal process for insuring that violations of PSD are detected, such as by creating specific inspections procedures which ensure an adequate review of PSD applicability. As part of this these procedures, OEPA can identify undetected major sources by comparing the annual reports that minor sources are required to submit with the fee reports submitted by the same sources. If one of those reports indicates higher than allowed emissions, OEPA can take action to address the situation.

F. Delegations of NSPS, PSD, and NESHAPS

U.S. EPA is concerned about OEPA's compliance with the terms of these various delegation documents. U.S. EPA recommends that OEPA take certain recommended actions identified below. OEPA's failure to follow these recommendations may result in further investigation, and potential revocation action, at a later date.

1. U.S. EPA seeks a description from OEPA of how it is ensuring that all regulated entities falling under each delegated program are identified and brought into the regulatory regime through appropriate permit conditions, especially those which may be exempt from getting a permit under Ohio's rules. This description will alleviate concerns by U.S. EPA that OEPA's reliance on its permitting system has led to inadequate implementation and enforcement of these programs. In the alternative, OEPA can address this issue by changing how it implements and enforces these delegations. In particular, OEPA can promulgate identical state regulations for each program, with some indication as to how the State laws will be updated when changes are made to the federal regulations, or OEPA can directly

incorporate by reference the federal regulations into state law. In addition, U.S. EPA recommends that OEPA describe how it plans to identify NSPS, PSD and NESHAPS sources currently not in the regulatory universe.

2. U.S. EPA asks OEPA to submit a formal request for approval to subdelegate its federally delegated NSPS, PSD and NESHAPS programs to its LAAs. With this request, OEPA should include copies of all of its subdelegation contracts with Ohio's LAAs.

3. U.S. EPA requests that OEPA to timely and consistently submit all quarterly and annual reports required under these delegation documents.

G. Inspections, Monitoring and Enforcement Tracking Plans Under Title V

Ohio must revise its part 70 program submittal to include a more complete description of OEPA's permitting program documentation as required by 40 C.F.R. 70.4(b)(4)(ii) and 70.4(b)(5). It has become clear that OEPA's reliance on the enforcement and monitoring portions of the grant agreements to fulfill the requirements of section 70.4 has not resulted in an adequately described State enforcement program for Title V. OEPA's approved inspection and monitoring plans for Title V sources contained in those grant agreements are subject to change and do not contain the specificity called for by the Title V regulations.

H. Training

Opportunities for improvement in training can be addressed through a more systematic approach to training, better coordination, and comprehensive planning. Also, U.S. EPA hopes OEPA pays attention to the training needs of district offices and LAAs to ensure that the citizens living in all areas of Ohio are equally protected from air pollution. As a first step, OEPA could designate an air enforcement training contact to work with a named representative of U.S. EPA to coordinate training and to develop a more detailed, recommended training program for State and local agency employees who enforce air pollution regulations. Second, a quality management plan could be developed for the training program to ensure it is achieving its goals. Finally, it will be helpful to OEPA and its local partners if OEPA can identify training needs, training providers and sources, minimum training requirements for employees, funding sources, and schedules for training.

I. Vacancies

In connection with U.S. EPA's concerns regarding OEPA's lack of resources and lack of a systemic approach to training, U.S. EPA has concerns about ongoing vacancies in the various OEPA offices. U.S. EPA recommends that in addressing the resource and training issues, OEPA also develop a strategy to ensure that vacancies are filled quickly.

FIGURES TO AIR REPORT

Figure 1

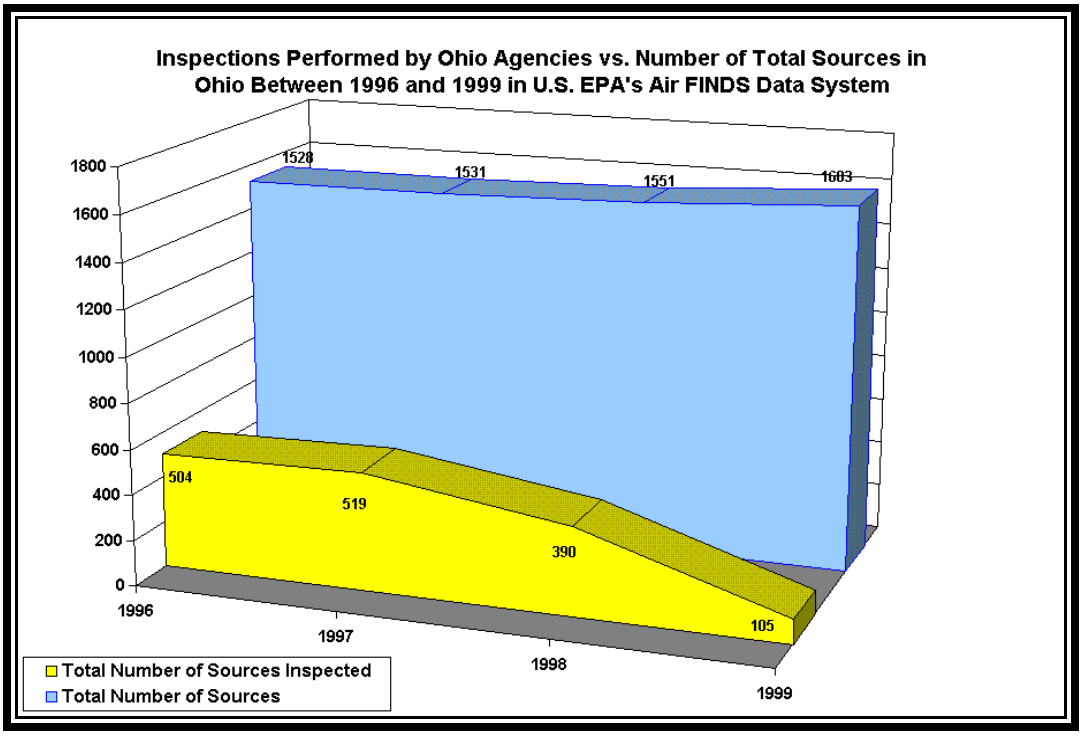
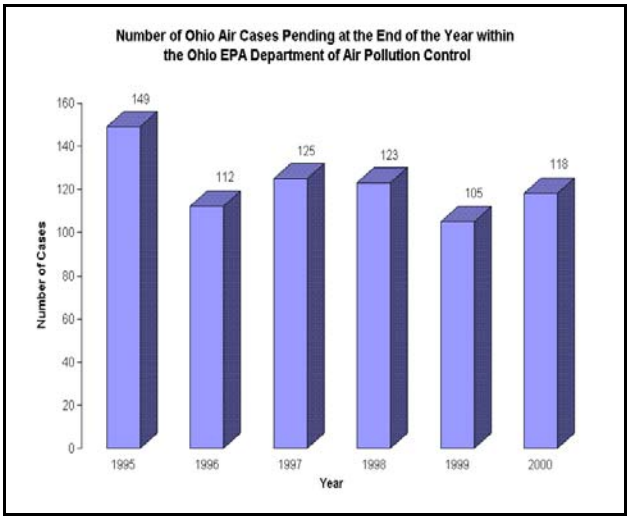


Figure 2



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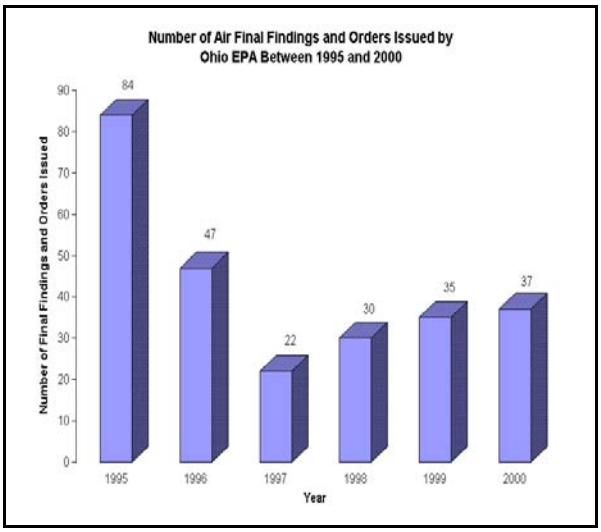

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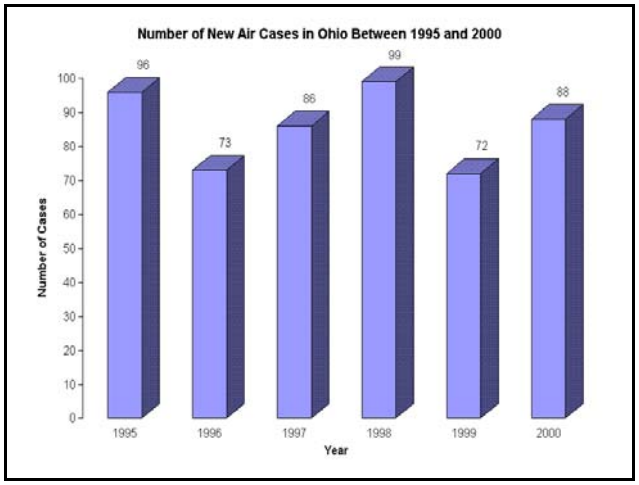

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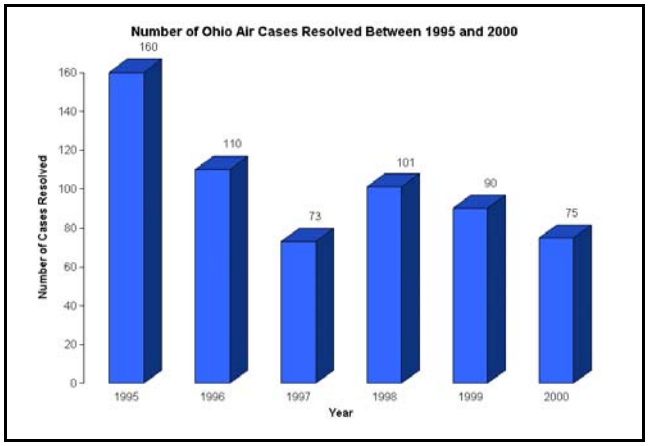
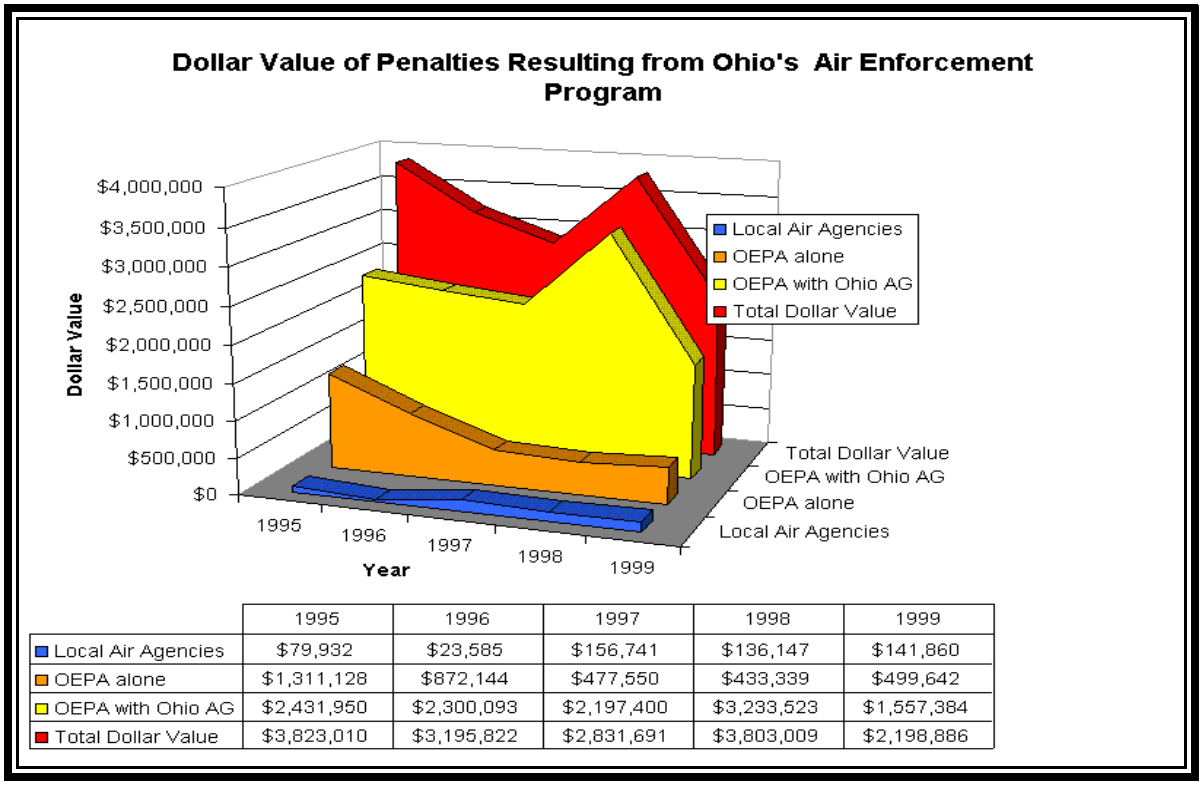


Figure 6



	1995	1996	1997	1998	1999
Local Air Agencies	$79,932	$23,585	$156,741	$136,147	$141,860
OEPA alone	$1,311,128	$872,144	$477,550	$433,339	$499,642
OEPA with Ohio AG	$2,431,950	$2,300,093	$2,197,400	$3,233,523	$1,557,384
Total Dollar Value	$3,823,010	$3,195,822	$2,831,691	$3,803,009	$2,198,886

Figure 7

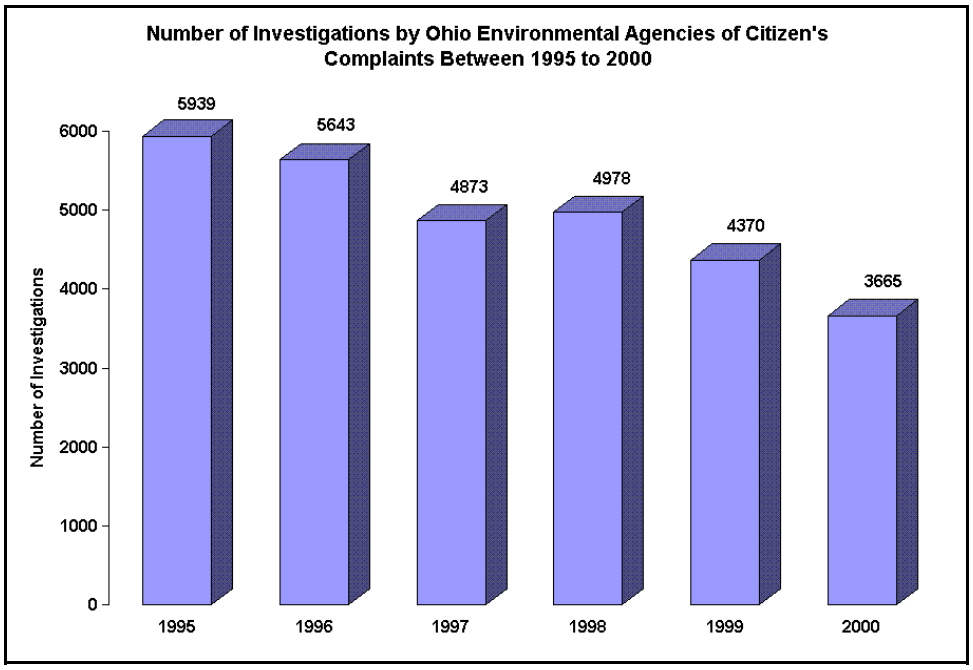


Figure 8

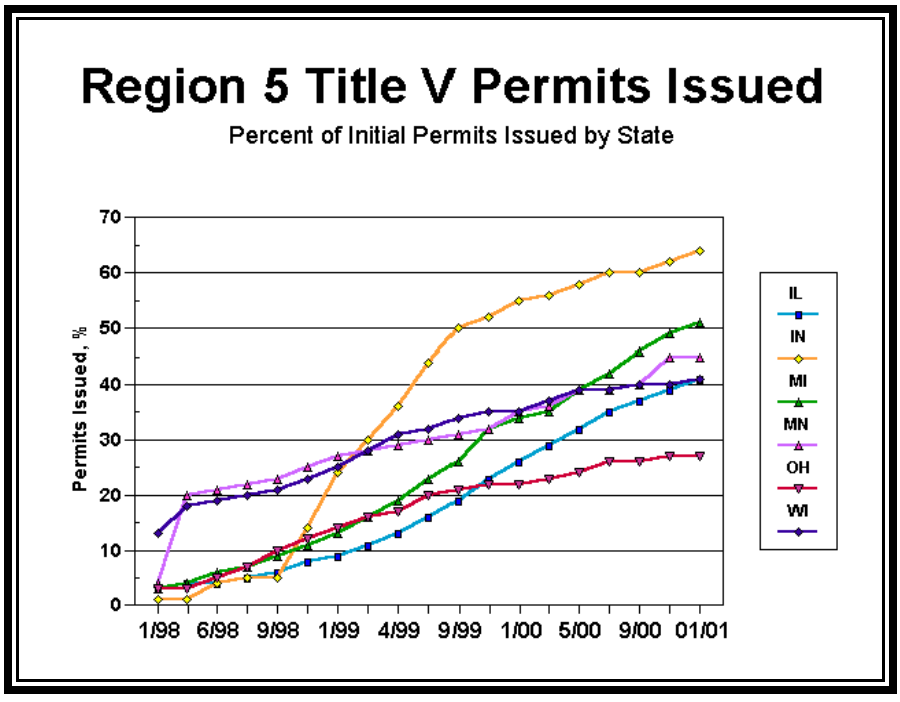


Figure 9

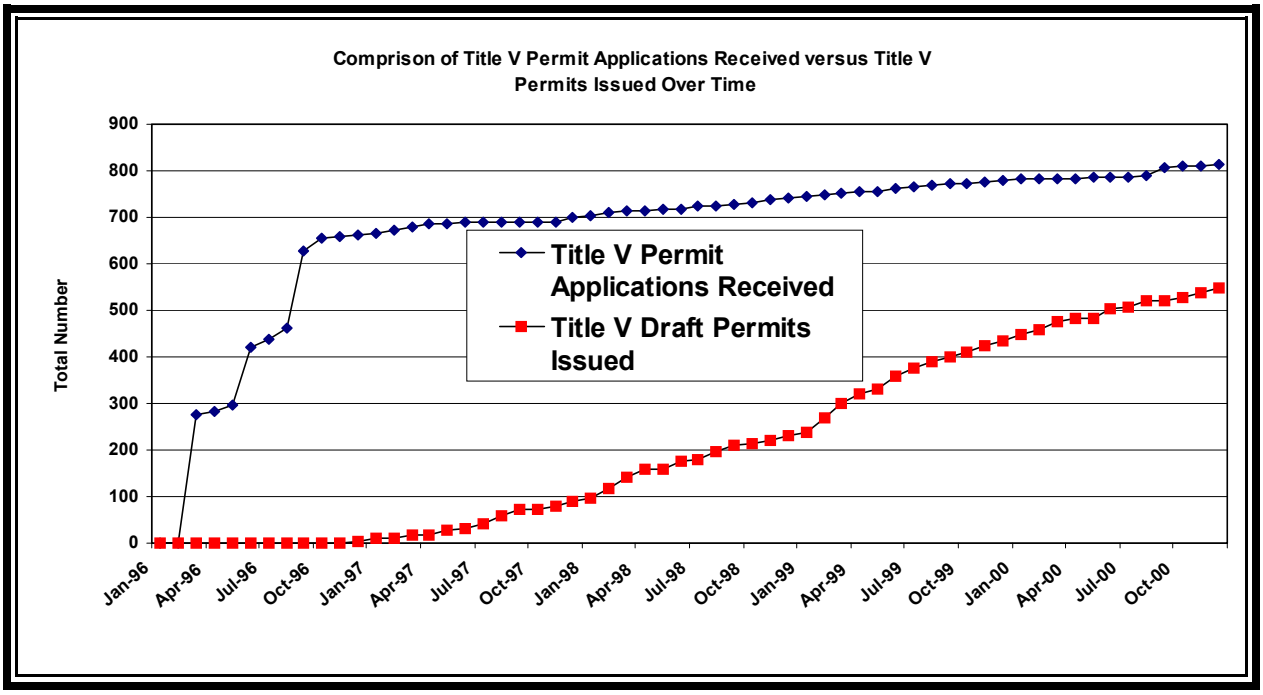


Figure 10

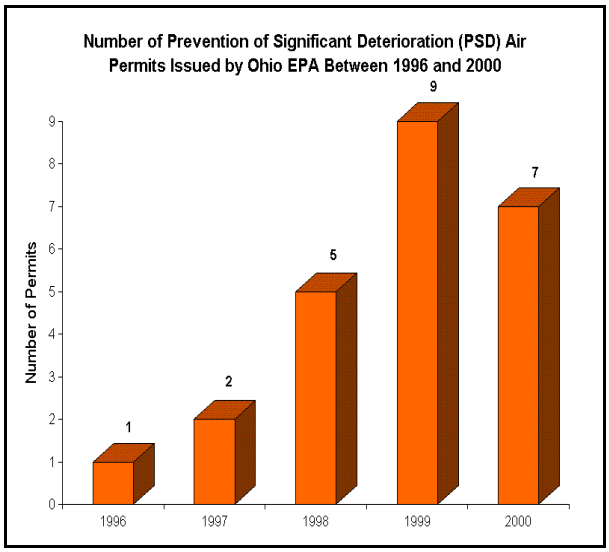
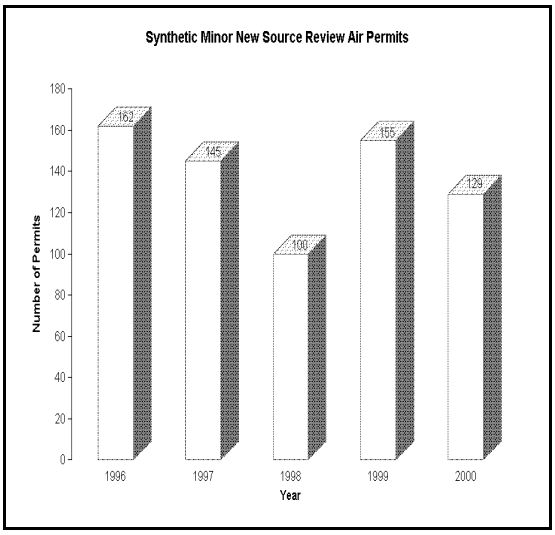


Figure 11



REVIEW OF OHIO CLEAN WATER ACT NPDES PROGRAM
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August 30, 2001 Draft Report on Review of Ohio Programs

REVIEW OF OHIO CLEAN WATER ACT NPDES PROGRAM

I. SUMMARY

The U.S. EPA received a petition, which as amended and supplemented, expressed concerns with Ohio environmental programs and requested that U.S. EPA withdraw Ohio's National Pollutant Discharge Elimination System (NPDES) program for the reasons set forth below. After each allegation contained in the petition, a summary of U.S. EPA's preliminary conclusions is set forth.

A. Antidegradation Requirements

The petitioners allege that OEPA has not been complying with the State's antidegradation requirements in siting landfills. Since U.S. EPA's NPDES program addresses the permitting of discharges from landfills and not the siting of landfills, our preliminary conclusion is that any alleged failure on the part of OEPA to comply with Ohio's antidegradation requirements in siting landfills does not constitute cause to commence proceeding for withdrawal of Ohio's NPDES program.

B. Antidegradation Rules

The petitioners allege that Ohio's antidegradation rules are deficient. State antidegradation policies are part of the State's water quality standards, and not a part of the State's NPDES program. Consequently, our preliminary conclusion is that any alleged deficiencies in Ohio's antidegradation rules does not constitute cause to commence proceeding for withdrawal of Ohio's NPDES program.

C. Total Maximum Daily Loads (TMDLs)

The petitioners allege that Ohio has failed to develop Total Maximum Daily Loads (TMDLs). Nothing in U.S. EPA's permitting regulations requires development of TMDLs. Instead, the requirements governing development of TMDLs are set forth at 40 C.F.R. Part 130. U.S. EPA's preliminary conclusion, therefore, is that Ohio's alleged failure to develop TMDLs does not constitute cause to commence proceeding for withdrawal of Ohio's NPDES program. In addition, Ohio completed development of a TMDL for a portion of the Cuyahoga River (approved by U.S. EPA) and has recently submitted several "pre-TMDLs" to U.S. EPA for U.S. EPA's comments, and has committed to a schedule for completing all of its TMDLs by the year 2013.

D. Water Quality Guidance for the Great Lakes System

The petitioners allege that OEPA failed to adopt requirements consistent with the Water Quality Guidance for the Great Lakes System at 40 C.F.R. Part 132. On August 4, 2000, U.S. EPA determined that, with one exception pertaining to whole effluent toxicity ("WET"), Ohio had adopted requirements consistent with the Guidance. U.S. EPA, therefore, specified that the WET requirements of the Guidance apply in the Great Lakes Basin in Ohio. Consequently, requirements consistent with the Guidance do apply in Ohio and U.S. EPA's preliminary conclusion is that this allegation does not constitute cause to commence proceedings for withdrawal of Ohio's NPDES program.

E. Concentrated Animal Feeding Operations (CAFOs)

The petitioners allege that OEPA has not been properly regulating concentrated animal feeding operations (CAFOs). OEPA has committed in the context of its CWA Section 106 grant to require documented CAFO dischargers to apply for NPDES permits, to develop and issue appropriate NPDES permits for CAFOs, and to take appropriate CWA enforcement actions in response to CWA violations committed by CAFOs. U.S. EPA believes that OEPA's commitment is a major step forward in addressing this longstanding deficiency. However, U.S. EPA needs a fuller description from OEPA regarding the steps that will be taken to fulfill OEPA's commitment.[25]

F. Certifications under Section 401 of the Clean Water Act for Certain Non-NPDES Projects

The petitioners allege that OEPA has improperly granted certifications under Section 401 of the Clean Water Act that certain non-NPDES projects will comply with Clean Water Act requirements, including the State's water quality standards. These allegations pertain to matters not addressed by U.S. EPA's NPDES permitting regulations and so U.S. EPA's preliminary conclusion is that they do not constitute cause to commence proceeding for withdrawal of Ohio's NPDES program. U.S. EPA further notes that, as a matter of federal law, states enjoy wide latitude in determining whether to grant Section 401 certifications and that U.S. EPA's only role with respect to these matters is to act as the certifying authority in those circumstances where a state lacks authority to do so itself.

[25]It should be noted that Ohio has recently enacted a statute which is designed to eventually transfer certain NPDES authorities pertaining to CAFOs to the Ohio Department of Agriculture.

G. NPDES Enforcement Program

The petitioners allege that OEPA's NPDES enforcement program is inadequate. In order to assess the adequacy of the State's enforcement program, compliance files were reviewed in four separate OEPA district offices. The following were deemed the most significant enforcement program concerns identified during the review:

1. Surfacing Violations

Because the Surface Water Information Management System (SWIMS) is not yet fully operational and able to detect violations, Ohio is unable to surface effluent violations in a timely manner (30 days after the report is due to the State as required under the Enforcement Management System). If Ohio resolves the outstanding issues with SWIMS, U.S. EPA does not believe that OEPA's current failure to surface violations in a timely manner will constitute sufficient cause to commence proceedings for withdrawal of Ohio's NPDES program.

2. PCS

Information regarding permit limits, violations and other types of information the State enters in the Permit Compliance System (PCS) is not accurate. This inaccuracy results in an unreliable quarterly noncompliance report. PCS is the national database for tracking permit issuance, compliance and enforcement activities. In addition, the State is not entering all inspections and enforcement actions into PCS. Nonetheless, if Ohio provides an acceptable schedule for resolving these issues, U.S. EPA does not believe that there will be cause to commence proceedings for withdrawal of Ohio's NPDES program.

3. Inspections

Resources directed toward conducting inspections appear to have diminished significantly over the past four fiscal years. Although it is encouraging that the downward trend in inspections appears to have slowed substantially between FY 99 and FY 00, the State needs to develop and receive approval for its inspection strategy and needs to address how long the State will continue diverting resources from compliance inspections to other activities. U.S. EPA's preliminary conclusion is that there is not cause to commence proceedings for withdrawal of Ohio's NPDES program based on the inspection issue.

H. Practical Quantification Levels (PQLs)

In addition, although the following issue was not raised in the petition, it was investigated as part of this review process. U.S. EPA has investigated OEPA's approach in addressing "practical quantification levels" (PQLs) situations where NPDES permits contain water quality based effluent limits (WQBELs) below the PQL. U.S. EPA believes that Ohio's approach for addressing WQBELs that are below the quantification level is generally consistent with federal requirements. This item needs further evaluation and U.S. EPA recommends that OEPA clarify that, where there is a minimum level for analytical procedures specified in or approved under 40 C.F.R. Part 136, the minimum level shall constitute the quantification level for permits outside the Lake Erie basin.

II. BACKGROUND

The petition requests that U.S. EPA withdraw Ohio's National Pollutant Discharge Elimination System (NPDES) program for a variety of reasons described below.

This report addresses a petition which, as amended and supplemented, expresses concerns about Ohio's environmental programs and asks to withdraw its approval and authorization of Ohio's NPDES program based on allegations concerning OEPA's administration of the program.

The petition, which was first submitted in 1997, originally asked U.S. EPA to withdraw its authorization of the NPDES program based on concerns with the Ohio audit privilege and immunity law (Audit Law). By letter dated December 21, 2000, U.S. EPA denied the component of the petition that requested withdrawal based on legal authority issues associated with the Audit Law. Ohio amended and interpreted the Audit Law to address authorization, delegation, and approval requirements after lengthy discussions between U.S. EPA, OEPA, and the Ohio Attorney General's Office that involved representatives of petitioners and of industry. The amendments went into effect on September 30, 1998. U.S. EPA reviewed the statutory and regulatory requirements and concluded that the amended Audit Law did not form a basis for withdrawing authorization of the NPDES program.

This report addresses the allegations in the September 18, 1998, August 4, 1999, and January 27, 2000, supplements to the petition concerning OEPA's implementation of the NPDES program. In general, the petitioners claim that OEPA fails to implement inspection, monitoring, permitting, enforcement and other activities subject to regulation under the NPDES program in a manner consistent with federal requirements.

III. ALLEGATIONS

The petition alleges that Ohio's NPDES program should be withdrawn for the following reasons:

1. OEPA has not been complying with Ohio's antidegradation requirements in siting landfills.

2. Ohio's antidegradation rules are flawed.

3. OEPA has failed to develop TMDLs.

4. Ohio failed to adopt requirements consistent with the Water Quality Guidance for the Great Lakes System (Guidance) at 40 C.F.R. Part 132.

5. OEPA has not been properly regulating concentrated animal feeding operations (CAFOs).

6. OEPA's CWA Section 401 certification process is inadequate.

7. OEPA's NPDES enforcement program is inadequate.

IV. WITHDRAWAL CRITERIA

The criteria for withdrawal of state NPDES programs are at 40 C.F.R. § 123.63. The procedures for withdrawal of state NPDES programs are at 40 C.F.R. § 123.64. 40 C.F.R. § 123.64(b)(1) provides that:

> The Administrator may order the commencement of withdrawal proceedings on his or her own initiative or in response to a petition from an interested person alleging failure of the state to comply with the requirements of this part as set forth in 123.63. The Administrator shall respond in writing to any petition to commence withdrawal proceedings [and] may conduct an informal investigation of the allegations in the petition to determine whether cause exists to commence [withdrawal] proceedings.

V. EVALUATION

U.S. EPA is conducting an informal investigation of the allegations in the petition pertaining to the State's NPDES program. The following describes the status of U.S. EPA's informal investigation to date as well as U.S. EPA's preliminary conclusions, based upon the allegations in the petition, as to whether cause exists to commence withdrawal proceedings.

A. Antidegradation Requirements

1. Allegation 1: The petition alleges that OEPA has not been complying with the State's antidegradation requirements in siting landfills. The petition cites two examples: the Danis Clark Company Landfill and the Monsanto Bond Road Landfill.

2. Response: Nothing in U.S. EPA's NPDES program regulations addresses the siting of landfills. Instead, those regulations address permitting of discharges from such landfills. Consequently, based on the information reviewed to date, any alleged failure on the part of OEPA to comply with Ohio's antidegradation requirements in siting landfills would not constitute cause to commence proceedings for withdrawal of Ohio's NPDES program. U.S. EPA notes that cause might exist to commence withdrawal proceedings if there was evidence of a widespread failure on OEPA's part to comply with Ohio's antidegradation requirements in issuing NPDES permits. However, the petition cites to no such evidence. Of the two landfills cited in the petition, only the Monsanto Bond Road Landfill has received a NPDES permit, and members of the public have appealed that permit to the Ohio Environmental Appeals Board. That appeal is still pending. U.S. EPA notes that the Monsanto Bond Road Landfill permit only authorizes discharges of storm water that have not come into contact with the active portions of the landfill. Leachate from the landfill is collected on-site and removed by truck for treatment and disposal elsewhere. The petitioners fail to explain how they believe OEPA should have acted differently under Ohio's antidegradation rules in issuing this permit. The petitioners also argue that OEPA failed to comply with its antidegradation rules with regard to a Mill Creek channelization project. Once again, this situation does not involve NPDES permitting, and therefore does not constitute cause to commence withdrawal of Ohio's NPDES program.

   In sum, based upon U.S. EPA's investigation to date, U.S. EPA does not believe that the petitioners' allegations regarding OEPA's alleged failure to comply with antidegradation requirements constitute sufficient cause to commence proceedings for withdrawal of Ohio's NPDES program.

B. Antidegradation Rules

1. Allegation 2: The petitioners allege that there are problems with Ohio's antidegradation rules.

2. Response: State antidegradation policies are part of a state's water quality standards. See 40 C.F.R. § 131.12. They are not a part of a state's NPDES program. Consequently, based on the information reviewed to date, any alleged deficiencies in Ohio's antidegradation rules would not constitute cause to commence proceeding for withdrawal of Ohio's NPDES program. U.S. EPA further notes that OEPA convened an external advisory group (EAG) involving many members of environmental organizations (including many of the petitioners in the present matter) to evaluate Ohio's antidegradation rules. The EAG made recommendations to OEPA concerning those rules and OEPA intends to use those recommendations in developing revised antidegradation rules, which OEPA hopes to propose for public comment in the 2001. U.S. EPA is confident that any alleged deficiencies in Ohio's antidegradation rules will be addressed through this process.

C. TMDLs

1. Allegation 3: The petitioners allege that OEPA has failed to develop TMDLs.

2. Response: U.S. EPA's permitting regulations require that NPDES permits contain water quality based effluent limitations that "are consistent with the assumptions and requirements of any available wasteload allocation for the discharge prepared by the State and approved by U.S. EPA pursuant to 40 C.F.R. § 130.7." 40 C.F.R. § 122.44(d)(vii)(B). However, nothing in U.S. EPA's permitting regulations requires development of TMDLs. Instead, the requirements governing development of TMDLs are set forth at 40 C.F.R. Part 130. Therefore, Ohio's alleged failure to develop TMDLs, based on the information reviewed to date, would not constitute cause to commence proceeding for withdrawal of Ohio's NPDES program. U.S. EPA further notes that Ohio completed development of a TMDL for a portion of the Cuyahoga River which U.S. EPA approved on October 11, 2000, has recently submitted several "pre-TMDLs" (i.e., watershed assessments and watershed modeling reports that will form the basis for

TMDLs in that watershed) to U.S. EPA for comments, and has committed to a schedule for completing all of its TMDLs by the year 2013.

D. Water Quality Guidance (Guidance) for the Great Lakes System

1. Allegation 4: The petitioners allege that OEPA failed to adopt requirements consistent with the Water Quality Guidance (Guidance) for the Great Lakes System at 40 C.F.R. Part 132.

2. Response: On August 4, 2000, U.S. EPA determined that, with one exception pertaining to whole effluent toxicity ("WET"), Ohio had adopted requirements consistent with the Guidance. *See* 65 Fed. Reg. 47864. U.S. EPA, therefore, specified that the WET requirements of the Guidance apply in the Great Lakes Basin in Ohio. *Id.* Consequently, requirements consistent with the Guidance do apply in Ohio and so this allegation does not constitute sufficient cause to commence proceeding for withdrawal of Ohio's NPDES program.

E. Animal Feeding Operations (CAFOs).

1. Allegation 5: The petitioners allege that OEPA has not been properly regulating concentrated animal feeding operations (CAFOs).

2. Response: OEPA has committed in the context of its CWA Section 106 grant to require documented CAFO dischargers to apply for NPDES permits, to develop and issue appropriate NPDES permits for CAFOs, and to take appropriate CWA enforcement actions in response to CWA violations committed by CAFOs. U.S. EPA believes that OEPA's commitment is a major step forward in addressing this longstanding deficiency. However, U.S. EPA needs a fuller description from OEPA regarding the steps that will be taken to fulfill OEPA's commitment. In particular, U.S. EPA needs a description and schedule from OEPA regarding the immediate steps that OEPA will take to ensure that those CAFOs that OEPA already knows have discharged in the past will be informed of their obligation to obtain NPDES permits, the future steps that OEPA will take to identify additional CAFOs that are discharging and to ensure that such CAFOs are informed of their obligation to obtain NPDES permits, the steps that OEPA will take to issue permits to known CAFO dischargers, and the steps that OEPA will take in response to situations where known CAFO dischargers do not obtain NPDES permits.
U.S. EPA notes that Ohio has recently enacted a statute which is designed to eventually transfer certain NPDES authorities pertaining to CAFOs to the Ohio Department of Agriculture. U.S. EPA further notes that under the terms of that statute, the NPDES authorities pertaining to CAFOs are

not transferred to the Ohio Department of Agriculture until such time as U.S. EPA approves the transfer. U.S. EPA will review whether the transfer of NPDES authorities from OEPA to the Ohio Department of Agriculture is consistent with federal requirements when Ohio submits a formal request to U.S. EPA for U.S. EPA approval of such transfer. Pursuant to 40 C.F.R. § 123.62(c), the Ohio Department of Agriculture will not be authorized to administer any NPDES authorities until the transfer is approved by U.S. EPA. Until such time, U.S. EPA expects that OEPA will fulfill its commitments with respect to implementing the NPDES program for CAFOs.

F. Certifications under Section 401 of the Clean Water Act

1. Allegation 6: The petitioners have alleged that OEPA has improperly granted certifications under Section 401 of the Clean Water Act that certain non-NPDES projects will comply Clean Water Act requirements, including the State's water quality standards.

2. Response: These allegations pertain to matters not addressed by U.S. EPA's NPDES permitting regulations and so do not constitute cause to commence proceedings for withdrawal of Ohio's NPDES program. U.S. EPA further notes that, as a matter of federal law, states enjoy wide latitude in determining whether to grant Section 401 certifications and that U.S. EPA's only role with respect to these matters is to act as the certifying authority in those circumstances where a state lacks authority to do so itself. That is not the case with Ohio.

G. NPDES Enforcement Program.

1. Allegation 7: OEPA's NPDES enforcement program is inadequate.

2. Response: In order to assess the adequacy of the State's enforcement program, compliance files were reviewed in four separate OEPA district offices: Cleveland, Bowling Green, Dayton and Columbus. The northern districts were visited February 7-9, 2000, and the southern districts were visited the following week. Several major enforcement program concerns were identified during the review. After a brief discussion of each issue, Ohio's response to date will be briefly discussed, followed by recommendations for program improvements.

a. Surfacing Violations

Ohio is unable to surface effluent violations in a timely manner (30 days after the report is due to the State as required under the Enforcement Management System). Effluent violations are currently surfaced by the State between 8 to 10 months after they occur. This lag is caused by the Surface Water Information Management System (SWIMS) not yet being fully operational and able to detect violations.

b. Electronic Reporting

Ohio is using electronic reporting for discharge monitoring report (DMR) submissions. Federal regulations require discharge monitoring reports to be signed. The State has no approved signature process for the electronic DMR submissions. Field staff and permittees have complained that the electronic system is not working properly in that data appears to be changed by the system and that some value added networks, such as AOL, actually corrupt the transmission of reports. Field staff also indicated that some permittees were only reporting electronically. They stated that when the electronic reports were not successfully transmitted, permittees were refusing to provide paper copies, thus also impairing the State's ability to surface effluent violations.

c. Concentrated Animal Feeding Operation (CAFO)

Although at the time of the file reviews the State was not conducting inspections to determine if animal feeding operations are CAFOs and meet permit application requirements or enforcing Clean Water Act provisions for discharge without a NPDES Permit, this item has generally been resolved through 106 Program Plan negotiations. See discussion of Allegation 5 above.

d. PCS

Information regarding permit limits, violations, and other types of information the State enters in the Permit Compliance System (PCS) is not accurate. This results in a very unreliable quarterly noncompliance report. PCS is the national database for tracking permit issuance, compliance and enforcement activities. In addition, the State is not entering all inspections and enforcement actions into PCS.

e. Formal Enforcement Actions

The attached chart page shows that there has been a significant reduction in formal enforcement actions initiated by OEPA based on information reported in the Permit Compliance System.

f. Inspections

Resources directed toward conducting inspections appear to have diminished significantly over the past four fiscal years. This trend may be due in part to the strategy U.S. EPA and the State agreed to that resources would be devoted to reducing the permit backlog (see discussion below). The number of inspections conducted by OEPA dropped from 763 to 402 inspections between FY 97 and FY 00, a decrease of 47% based upon the number of compliance inspections reported in Permit Compliance System (PCS). Although it appears that the trend toward reduced numbers of inspections is continuing, it is encouraging that the downward trend in inspections appears to have slowed substantially between FY 99 and FY 00.

g. NPDES Permits

Because of the relationship between the number of inspections conducted and Ohio's issuance of NPDES permits, a brief overview of the NPDES backlog issue will now be discussed. Ohio's overall NPDES permit backlog is at 27 percent. The backlog for major facilities is at 31 percent, while the backlog for minor facilities is at 27 percent. At the beginning of calendar year 2000 the backlog for major dischargers was around 50 percent, while the backlog for minor dischargers was at 44 percent.

For a number of reasons, the backlog for majors as well as minors was very high during fiscal years '98 and '99. The reasons for the backlog fall largely into three categories: resources/staffing, workload/priorities and data systems.

Resources/Staffing: Modeling and permit writing staff levels have declined over the last several years. This has resulted in a decline in the number of minor and major permits issued over the last few years. Inability to replace staff and the State's adoption and implementation of requirements consistent with the Water Quality Guidance for the Great Lakes System at 40 C.F.R. Part 132 (which resulted in some permitting and modeling staff being shifted to work on the new rules) contributed to the problem.

Workload/Priorities: The new Water Quality Guidance rules require a greater resource expenditure to renew permits. A priority shift to focus on watershed problems also resulted in decreased priority for minor permit renewals. In addition, permitting essentially stopped in January 1999 for conversion of data to the new electronic permitting system, which had an extremely steep learning curve. The modeling unit was unable to provide enough Permit Support Documents (PSDs) each year to issue 80 majors per year. Further, major permits and some minor permits could not be "rolled over" because of required modeling and potential evaluations under the new rules.

Data Systems: SWIMS will take time to work out "bugs" and for staff to learn the system. The

district and Central Office staff will need to devote time to learning the other areas of SWIMS later this year: enforcement, Permits to Install (PTIs) and 401 Certifications.

Strategy

OEPA submitted a proposal to reduce the backlog. Ohio proposes to issue 80 major permits per year to reach a 10 percent backlog by the end of State Fiscal Year '02. From then on, Ohio plans to maintain the 10 percent backlog for majors. OEPA proposes to issue 550 minor permits per year to reduce the backlog to under 10 percent by the end of State fiscal year '04. To accomplish the reduction in a permit backlog, Ohio needs additional personnel, both at the District and Central Office.

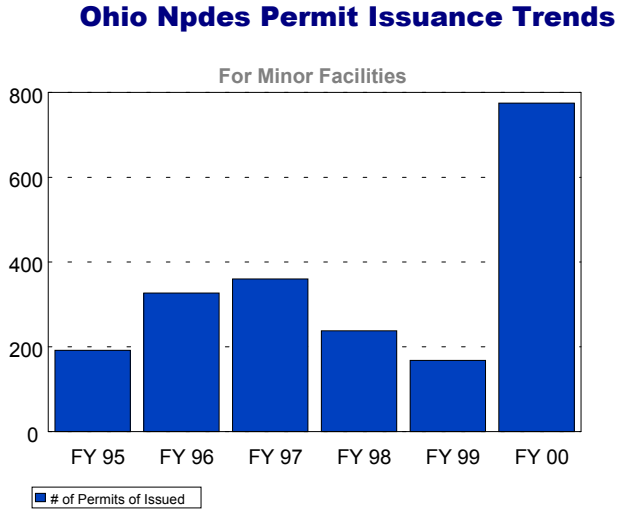
VI. STATE RESPONSE

A brief discussion of the State's response to the enforcement issues raised above follows:

A. Surfacing Violations: State Response

While the State's response acknowledges the reduction in the number of formal enforcement actions noted above, and attributes the reduction in the number of enforcement actions to problems in bringing the new SWIMS system on line, the State provided no schedule for addressing this deficiency. While it is encouraging that the State has indicated that it is actively working to correct this deficiency and has made it an Agency priority to see it corrected in the near term, the State needs to provide an expedited schedule for resolving this issue.

B. Electronic Reporting: State Response



Currently OEPA requires a signed Memorandum of Agreement (MOA) with each facility that submits data electronically. The MOA is signed by the individual who signs the Monthly Operations Report (MOR) and is kept on file in the Central Office. The MOA contains the certification language from the MORs and the agreement that the use of the

personal identification number will serve as the electronic signature of the individual.

C. PCS: State Response

The State reported that it has undertaken efforts to catch up on data entry for enforcement actions and should it has undertaken complete these efforts in the near future. The limits in PCS generated by the PCS interface expired December 31, 1999, due to the Liquid Effluent Analysis Proceesing System (LEAPS) Y2K issue. The limits converted from LEAPS to SWIMS expired December 31, 1999, as well. The State reported that it is in the process of identifying situations where major permits contain limit changes after December 31, 1999, and will incorporate these changes into SWIMS for updates to PCS.

D. Inspections: State Response

The State has reduced the effort directed towards reportable inspections in order to address other issues. The State also indicated that many inspections conducted at minor facilities, agricultural facilities, and storm water construction sites are not recorded in PCS. For example, in 1999 the State conducted 1612 storm water inspections; in 1999 that number rose to 2000; and as of July 2000, OEPA, had conducted 834 storm water inspections.

VII. SUGGESTED PROGRAM IMPROVEMENTS

1. The State needs to provide an expedited schedule for resolving outstanding issues with SWIMS so that effluent violations can be surfaced for appropriate enforcement in a timely manner, i.e., within 30 days of the date that DMRs are due to the State. The State should also provide a plan and schedule for resolving the remaining problems with the electronic reporting of DMRs and correcting the limit records in PCS. If such a schedule is provided and is determined to be acceptable, U.S. EPA does not believe that OEPA's current failure to surface violations in a timely manner would constitute sufficient cause to warrant commencement of withdrawal proceedings for withdrawal of Ohio's NPDES program.

2. The State needs to develop and receive approval for its inspection strategy. This should include addressing how long the State will continue diverting resources from compliance inspections to other activities. The State should also consider increasing resources devoted to this activity in view of the problems noted above with SWIMS and the reported problems with electronic reporting. U.S. EPA's preliminary conclusion is that if the commitment regarding SWIMS describes above are made and this issue is addressed, there is not sufficient cause to commence proceedings for withdrawal of Ohio's NPDES program based on the inspection issue.

VIII. ADDITIONAL MATTER NOT RAISED BY PETITION

U.S. EPA has investigated one NPDES issue not raised by the petitioners. Specifically, U.S. EPA has investigated OEPA's approach to addressing "practical quantification levels" (PQLs) in situations where NPDES permits contain water quality based effluent limits (WQBELs) below the PQL.

ORC 6111.13(A)(2) defines PQL as:

> a concentration that is five times the method detection limit for the most sensitive available analytical procedure currently approved under 40 C.F.R. Part 136 for a pollutant unless the director of environmental protection, by rules adopted in accordance with Chapter 119 of the Revised Code, establishes a different [PQL] for the pollutant that is consistent with and no more stringent than the appropriate national consensus standard or other generally accepted standard.

ORC 6111.13(B) provides:

> Notwithstanding any other provisions of this chapter to the contrary, and until the director has adopted rules specifying a different basis for determining compliance consistent with and no more stringent than an appropriate national consensus standard or other generally accepted standard, if a discharge limit is set below the [PQL] for a particular parameter, any value reported at or below the [PQL] shall be considered to be in compliance with that limit.

OEPA adopted the following regulations at OAC 3745-33-07(C):

> (C) WQBELS below quantification levels. This paragraph shall apply when a water quality based effluent limit for a pollutant is calculated to be less than the quantification level.
>
> (1) The director shall designate as the limit in the NPDES permit the WQBEL exactly as calculated;
>
> (2) Analytical methods, quantification and compliance levels.
>
> (a) The permittee shall use the most sensitive analytical procedure currently approved under 40 C.F.R. § 136 for each individual pollutant.
>
> . . . .
>
> (c) For the purpose of assessing compliance with an NPDES permit, any value reported below the quantification level shall be considered in compliance with the effluent limit. For the purpose of calculating compliance with average limitations

contained in an NPDES permit, compliance shall be determined by taking the arithmetic mean of reported values for a given reporting period and comparing that mean to the appropriate average permit limitation, using zero for any values detected at concentrations less than the quantification level. Arithmetic mean values that are less than or equal to the permit limitation shall be considered in compliance with the effluent limit.

(d) The quantification level is defined as the practical quantification level except, for discharges to the Lake Erie basin, the quantification level shall be the minimum level for analytical procedures in 40 C.F.R.136.

(e) The director may establish PQLs for a pollutant with a method listed in 40 C.F.R. 136 or, if no analytical method for the pollutant has been promulgated under 40 C.F.R. 136, the director may establish a PQL for the pollutant using an appropriate consensus standard or other generally accepted standard for the analytical method; if no such standard exists, the director may establish a PQL in the permit based on MDLs determined using the procedures in 40 C.F.R. 136 appendix B.

(f) Discharge-specific quantification levels. Permittees may apply for discharge-specific quantification levels. Discharge-specific quantification levels shall be calculated using the procedures provided in 40 C.F.R. 136 appendix B.

U.S. EPA believes that Ohio's approach for addressing WQBELs that are below the quantification level is generally consistent with federal requirements. U.S. EPA recommends that OEPA clarify that, where there is a minimum level for analytical procedures specified in or approved under 40 C.F.R. Part 136, the minimum level shall constitute the quantification level for permits outside the lake Erie basin. U.S. EPA believes that any "minimum level" that has been specified in or approved under 40 C.F.R. Part 136 OEPA would be consistent with "an appropriate consensus standard or other generally accepted standard." Consequently, U.S. EPA believes that OEPA can easily implement U.S. EPA's recommendation.

RESOURCE CONSERVATION AND RECOVERY ACT
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August 30, 2001 Draft Report on Review of Ohio Programs

REVIEW OF OHIO RCRA PROGRAMS

I. SUMMARY

U.S. EPA Region 5 received a petition which, as amended and supplemented, expressed concerns with environmental programs administered by the OEPA and asked the U.S. EPA to withdraw approval or authorization of two Resource Conservation and Recovery Act (RCRA) programs based on allegations concerning OEPA's administration of these programs.

This RCRA Review report addresses allegations that criticized OEPA's implementation of the RCRA Subtitle C (hazardous waste) and Subtitle D (solid waste) programs. The petitioners requested withdrawal of Ohio's authorized Subtitle C hazardous waste program pursuant to 42 U.S.C. § 3006(e) and withdrawal of its approved Subtitle D program pursuant to 42 U.S.C. § 6947.

A. ALLEGATIONS

1. SUBTITLE C

The petitioners claim that OEPA avoids enforcing its environmental laws and fails to inspect and monitor activities subject to regulation. Furthermore, the petitioners claim that OEPA abandoned its existing enforcement efforts in favor of the Ohio's Voluntary Action Program (VAP). The January 27, 2000 supplement to the petition included a table that listed the following installations as examples where OEPA failed to carry out certain aspects of the RCRA hazardous waste program: Georgia-Pacific Resin in Columbus; the Tremont Sanitary Landfill in Springfield; the Bond Road Landfill in Whitewater Township; the River Valley High School in Marion; AK Steel in Middletown; WTI in East Liverpool; Envirosafe in Oregon; Brush Wellman in Elmore; PPG Industries in Circleville; Elano Corporation in Beavercreek; and Worthington Custom Plastic in Warren County.

The petitioners claim that OEPA fails to exercise control over authorized hazardous waste program activities, including failure to issue timely permits and the issuance of permits that do not conform to the requirements of RCRA. The petitioners also claim that OEPA fails to implement the hazardous waste program in a manner consistent with or equivalent to the federal program requirements. This includes issuing improper permit variances and exemptions and allowing facilities to participate in the VAP as a substitute for permitted corrective action activities.

2. SUBTITLE D

The petitioners claim that Ohio's solid waste program fails to ensure that waste is disposed of in an environmentally sound manner and in compliance with 42 U.S.C. § 6944(a). The petitioners also claim that Ohio fails to close or upgrade existing open dumps and that OEPA lacks the ability to adequately control air emissions, surface water discharges and groundwater contamination from municipal solid waste landfills (MSWLFs). Five MSWLFs were listed as examples of alleged failures of the program: the Clarkco Sanitary Landfill in Springfield; the Tremont Sanitary Landfill in Springfield; the ELDA Recycling & Disposal Facility in Cincinnati; the Bond Road Landfill in Whitewater Township; and the Rumpke Sanitary Landfill in Hamilton County.

B. PRELIMINARY CONCLUSIONS

1. SUBTITLE C

a. *Enforcement Actions*

Based on our evaluation of the claims set forth in the petition and a review of the annual audits of Ohio's hazardous waste enforcement program from 1995 through 2000, U.S. EPA does not believe that the evidence substantiates petitioners' allegations that OEPA avoids enforcing its environmental laws or fails to inspect and monitor activities subject to regulation, or that it constitutes sufficient cause under 40 C.F.R. § 271.22(a)(3) to warrant commencement of formal withdrawal proceedings.

b. *Permits*

Based on the criteria found in 40 C.F.R. § 271.22 and the information reviewed to date, there does not appear to be sufficient evidence to substantiate the petitioners' allegation that OEPA fails to exercise control over authorized hazardous waste program activities, or to merit commencement of formal withdrawal proceedings. In general, U.S. EPA found that the Ohio RCRA permits were properly issued, sufficiently detailed, and consistent with the language used in federal RCRA permits. We checked the Ohio's technical requirements for containers and tanks against 40 C.F.R. §§ 264.190 and 264.170, and found them to address all relevant requirements.

Our file review did not substantiate the allegations that OEPA failed to exercise control, issued permits which do not conform to the requirements of RCRA, or failed to implement the hazardous waste program in a manner consistent with or equivalent to the federal program requirements. On the contrary, our review concluded that, in general, OEPA has performed adequately in these matters of RCRA permit issuance.

c. *Equivalence with federal program requirements*

Based on the criteria found at 40 C.F.R. § 271.22 and the information reviewed to date, there does not appear to be sufficient evidence to substantiate the petitioners' allegation that OEPA fails to implement the hazardous waste program in a manner consistent with or equivalent to the federal program requirements; or warrant commencement of withdrawal proceedings.

While U.S. EPA does not agree with every OEPA variance/waiver decision, OEPA can support its decisions based on the RCRA regulations. Most of the exemption issues under review related to the distinction between recycling and reclamation. The issues raised in this review for issuance of exemptions include: application of a different district court opinion issued in the period between the time an U.S. EPA rule is vacated and reinstituted; application of the distinction between recycling and reclamation; application of LDR to characteristic waste with potential health impacts; application of the alcohol ignitability characteristic exclusion beyond alcoholic beverages; and application of delisting requirements for listed waste regardless of the waste contaminant content. Regarding some variance applications, U.S. EPA might have made different decisions than Ohio. However, after discussing these decisions with OEPA, U.S. EPA understands OEPA's regulatory interpretations, reasoning, and decisions. To avoid potential future disagreements after the fact, U.S. EPA has instituted a quarterly call to discuss variance issues.

d. VAP

U.S. EPA found no evidence to substantiate the petition's claim that OEPA has abandoned or is abandoning enforcement efforts by allowing facilities to enter the State's statutory VAP. To assess the potential impact, if any, of the VAP on the State's RCRA program, U.S. EPA looked at the Ohio VAP statute, the implementing State regulations, and the application of the program by OEPA. Section 3746.02 of the VAP statute explicitly precludes participation by properties precluded from participating by federal law, including RCRA. This section would appear to avoid any conflict between RCRA authorization requirements and the VAP. Since the VAP regulations do not precisely mirror the broad exclusion in the VAP statute and since the VAP Statute also contains a privilege provision, however, U.S. EPA is requesting an opinion from the Ohio Attorney General to clarify the application of the VAP program, as implemented in the regulations, and the impact, if any, on the authorization requirements for permitting and corrective action, accessing information and releasing information.

2. SUBTITLE D

Based on the criteria set forth in 40 CFR § 239.13 and our evaluation of claims set forth in the petition, there does not appear to be sufficient substantive information to indicate that U.S. EPA should commence formal withdrawal proceedings based on failure of the current Ohio MSWLF permit program to meet the minimum federal requirements for an adequate program under

§ 4005(c)(1)(C) of RCRA, 42 U.S.C. § 6945(c)(1)(C). All requirements in the Ohio Revised Code (ORC 3734 and 3745) and Ohio's MSWLF permitting and enforcement program appear to meet or exceed the minimum federal requirements. OEPA appears to be implementing the program appropriately.

Based on the evidence reviewed to date we preliminarily concluded that there is not sufficient cause to initiate proceedings to withdraw Ohio's solid or hazardous waste programs. However, we request an opinion from the Ohio Attorney General regarding the impact, if any, of the VAP on Ohio authorities related to RCRA.

II. BACKGROUND

This report addresses a petition which, as amended and supplemented, expressed concerns with Ohio environmental programs administered by OEPA and asked U.S. EPA to withdraw our approval and authorization of two Resource Conservation and Recovery Act (RCRA) programs based on allegations concerning OEPA's implementation of these programs.

The petition, which was first submitted in 1997, originally asked U.S. EPA to withdraw our authorization of the RCRA Subtitle C program based on concerns with the Ohio Audit Privilege and Immunity Law (Audit Law). Ohio amended and interpreted the Audit Law to address authorization, delegation, and approval requirements after lengthy discussions between U.S. EPA, OEPA, and the Ohio Attorney General's Office that involved representatives of petitioners and of industry. The amendments went into effect on September 30, 1998. U.S. EPA reviewed the statutory and regulatory requirements and concluded that the amended Audit Law did not form a basis for withdrawing authorization of the RCRA Subtitle C program and, by letter dated December 21, 2000, denied the component of the petition that requested withdrawal based on legal authority issues associated with the Audit Law.

This report addresses the allegations in the September 18, 1998, August 4, 1999, and January 27, 2000 supplements to the petition concerning OEPA's implementation of the RCRA Subtitle D (solid waste) and Subtitle C (hazardous waste) programs. The petitioners requested withdrawal of Ohio's approved Subtitle D program pursuant to 42 U.S.C. § 6947 and withdrawal of its authorized Subtitle C hazardous waste program pursuant to 42 U.S.C. § 3006(e).

III. ALLEGATIONS

A. SUBTITLE C

The petitioners claim that OEPA avoids enforcing its environmental laws and fails to inspect and monitor activities subject to regulation. Furthermore, the petitioners claim that OEPA abandoned its existing enforcement efforts in favor of the State's Voluntary Action Program

(VAP). The January 27, 2000 supplement to the petition included a table that listed the following installations as alleged examples in which OEPA has failed to carry out certain aspects of the RCRA hazardous waste program: Georgia-Pacific Resin in Columbus; the Tremont Sanitary Landfill in Springfield; the Bond Road Landfill in Whitewater Township; the River Valley High School in Marion; AK Steel in Middletown; WTI in East Liverpool; Envirosafe in Oregon; Brush Wellman in Elmore; PPG Industries in Circleville; Elano Corporation in Beavercreek; and Worthington Custom Plastic in Warren County.

The petitioners also claim that OEPA fails to exercise control over authorized hazardous waste program activities, including allegations that OEPA fails to timely issue permits and issues permits that do not conform to the requirements of RCRA. In addition, the petitioners claim that OEPA fails to implement the hazardous waste program in a manner consistent with or equivalent to the federal program requirements. This includes allegations that OEPA issues improper permit variances and exemptions and allows facilities to participate in the VAP as a substitute for permitted corrective action activities.

B. SUBTITLE D

The petitioners claim that Ohio's solid waste program fails to ensure that waste is disposed of in an environmentally sound manner and in compliance with 42 U.S.C. § 6944(a). The petitioners claim that Ohio fails to close or upgrade existing open dumps in accordance with 42 U.S.C. § 6945. Furthermore, the petitioners claim that OEPA lacks the ability to adequately control air emissions, surface water discharges and groundwater contamination from municipal solid waste landfills (MSWLFs). Five MSWLFs were listed as examples of alleged failures of the program: the Clarkco Sanitary Landfill in Springfield; the Tremont Sanitary Landfill in Springfield; the ELDA Recycling & Disposal Facility in Cincinnati; the Bond Road Landfill in Whitewater Township; and the Rumpke Sanitary Landfill in Hamilton County. In the summer of 2000, the petitioners submitted several affidavits in support of the claims set forth in the petition.

IV. WITHDRAWAL CRITERIA

A. SUBTITLE C

The criteria for withdrawal of a State's hazardous waste program are found in 40 C.F.R. § 271.22(a), which provides that the Administrator may withdraw program approval when the State no longer complies with specific requirements set forth in the regulations and fails to take corrective action. Such circumstances include the following:

> (1) When the State's legal authority no longer meets the requirements of this part, including:
>
> (i) Failure of the State to promulgate or enact new authorities when necessary; or

(ii) Action by a State legislature or court striking down or limiting State authorities;

(2) When the operation of the State program fails to comply with the requirements of this part, including:

(i) Failure to exercise control over activities required to be regulated under this part, including failure to issue permits;

(ii) Repeated issuance of permits which do not conform to the requirements of this part; or

(iii) Failure to comply with the public participation requirements of this part;

(3) When the State's enforcement program fails to comply with the requirements of this part, including:

(i) Failure to act on violations of permits or other program requirements;

(ii) Failure to seek adequate enforcement penalties or to collect administrative fines when imposed; or

(iii) Failure to inspect and monitor activities subject to regulation; and

(4) When the State program fails to comply with the terms of the Memorandum of Agreement required under § 271.8. (See 40 C.F.R. §271.22(a))

B. SUBTITLE D

The criteria and procedures for withdrawal of a determination of adequacy related to a State MSWLF permit program are found in 40 C.F.R. § 239.13, which states that the Regional Administrator may initiate withdrawal of a determination of adequacy when there is reason to believe that either: (1) the State no longer has an adequate permit program; or (2) the State no longer has adequate authority to administer and enforce an approved program in accordance with 40 C.F.R. Part 239. Since OEPA still maintains authority to administer and enforce its Municipal Solid Waste Landfill (MSWLF) program (see 59 Fed. Reg. 30353-30356 (6/13/94)), U.S. EPA focused our evaluation on whether Ohio's MSWLF permit program is still adequate, based on a review of the claims set forth in the petition as well as information gathered during the evaluation of those claims.

The criteria that U.S. EPA used in 1994 to determine that Ohio's MSWLF program was adequate under Subtitle D of RCRA included the following: (1) the State must have had enforceable standards for new and existing MSWLFs that are technically comparable to U.S. EPA's revised criteria; (2) the State must have had authority to issue a permit or other notice of prior approval to all new and existing MSWLFs in its jurisdiction; (3) the State must have provided for public participation in permit issuance and enforcement; and (4) the State must have shown that it had sufficient compliance monitoring and enforcement authorities to take specific action against any owner or operator that fails to comply with an approved MSWLF program. As part of our review of the withdrawal criteria, we considered whether the Ohio still met these approval criteria.

V. EVALUATION

A. SUBTITLE C

In order to assess the Ohio RCRA Subtitle C program, U.S. EPA reviewed the allegations in the petition, conducted an expanded annual audit of OEPA's enforcement files, reviewed permit, variance and exemption files, cross-referenced the VAP list with the RCRA Information System (RCRIS) database list of permitted and interim status facilities, and analyzed the impact of the VAP on RCRA authorities.

We also reviewed the numerous affidavits submitted by the petitioners and considered the information contained in those affidavits. We reviewed the allegations in the affidavits and compared them to the allegations in the petition. The affidavits included additional examples of the allegations made in the petition, although we identified no new allegations regarding the Subtitle C enforcement or hazardous waste management programs.

1. *Enforcement Actions*

Pursuant to 40 C.F.R. § 271.8, U.S. EPA and OEPA executed a Memorandum of Agreement (MOA) as part of the RCRA Subtitle C authorization process. The MOA establishes policies, responsibilities, and procedures for the implementation and administration of the State's Hazardous Waste Management Program. Part III of the MOA, entitled "State Program Review," outlines the process for U.S. EPA to assess OEPA's hazardous waste program (See March 6, 1989 MOA). This process includes annual U.S. EPA audits of State program enforcement activities. These audits focus on a subset of inspections and enforcement cases. Figure 1 shows the number of inspections OEPA conduct. Figure 2 shows the number of findings and orders issued by OEPA.

The MOA also states that OEPA agrees to take timely and appropriate enforcement action as defined in the Compliance Monitoring and Enforcement (CM&E) Strategy. The CM&E Strategy, finalized on February 12, 1993, establishes criteria and policies which OEPA's Division of Hazardous Waste Management (DHWM) will follow in order to carry out a comprehensive enforcement program. The CM&E Strategy states that enforcement actions taken in response to violations will be consistent with the procedures and time frames outlined in U.S. EPA's Hazardous Waste Civil Enforcement Response (HWCER) Policy. The CM&E Strategy states that penalties and economic sanctions sought will be consistent with U.S. EPA's 1990 RCRA Civil Penalty Policy.

To address the allegations in the petition, U.S. EPA's review compared the annual audit results with the program criteria in the CM&E Strategy, the HWCER Policy and the RCRA Civil

Penalty Policy. Each of U.S. EPA's annual audits from 1995 through 2000 concluded that OEPA ran an effective enforcement program. The 1995 audit concluded that OEPA addressed violations acceptably within the HWCER Policy time frame, although there was incomplete data in one of the files under review. The 1996 and 1997 audits also concluded that OEPA addressed violations acceptably within the HWCER Policy time frame. Data entry discrepancies between what was reported in the national database and what was included in the file at the time of the audit were noted for some of the files from both audits. The 1998 audit also concluded that OEPA addressed violations acceptably within the HWCER Policy time frame, but failed to follow up on the compliance status of a facility in one case. Data entry discrepancies, similar to those noted 1996 and 1997, were found in several files that were reviewed during the 1998 audit. The 1999 audit concluded that, with the exception of two cases, OEPA addressed all violations within the HWCER Policy time frame. Data entry discrepancies like the ones noted in 1996, 1997 and 1998 were found in some of the files. The 2000 audit concluded that OEPA addressed violations acceptably within the HWCER Policy time frame. Data entry discrepancies like the ones noted in the 1996, 1997, 1998 and 1999 were also found in some of the files.

We investigated the claims set forth in the petition according to our "Protocols for Responding to Issues Related to Subtitle C Enforcement." This included visiting OEPA's Central, Northeast, Northwest, and Southwest District offices to review case files. Case files from the Southeast District Office were sent to the Southwest District Office for our review. U.S. EPA also reviewed information regarding the installations specified in the table included in the January 27, 2000 supplement to the petition.

Figure 1

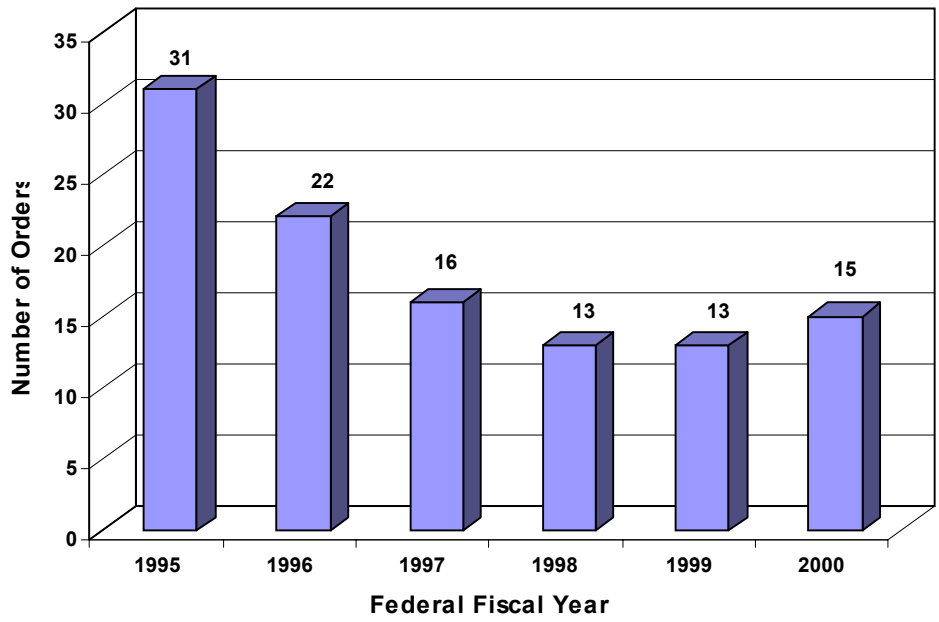


Figure 2

2. *Permits*

To respond to the allegations regarding the hazardous waste management program, U.S. EPA reviewed the quality of Ohio's permitting activity and looked for areas where the State program varied from the rules, policies, and recommendations of the national RCRA program. Our review focused on trends in the State program, rather than on specific weak points in any one permit.

Part of this review included examining the current RCRA permit and post-closure files.[26] This was done to satisfy the petitioners' request for a broader review of the program than simply reviewing past issues. We selected permits based on an overlap of districts with RCRA permitting complaints and permit issuances from October 1994 to October 1999. Our primary focus for this part of the review was on operating permits because they have historically been a higher priority for both agencies and because Ohio issued only a few post-closure-only permits during that time period.

The permitting files that U.S. EPA selected were reviewed at OEPA's Twinsburg and Columbus offices. We examined additional information in our Chicago office both before and after this review. We also reviewed several documents and program elements, including the Permit Modification Process Guidance Document (May 1998), Permit Point Personnel Utilization Guidance Document (July 1998), Tank Systems Requirements Advisory (October 1997), and the Twinsburg office hazardous waste facility file system. These activities were conducted to determine whether or not OEPA issued permits that contained sufficient controls as required by RCRA.

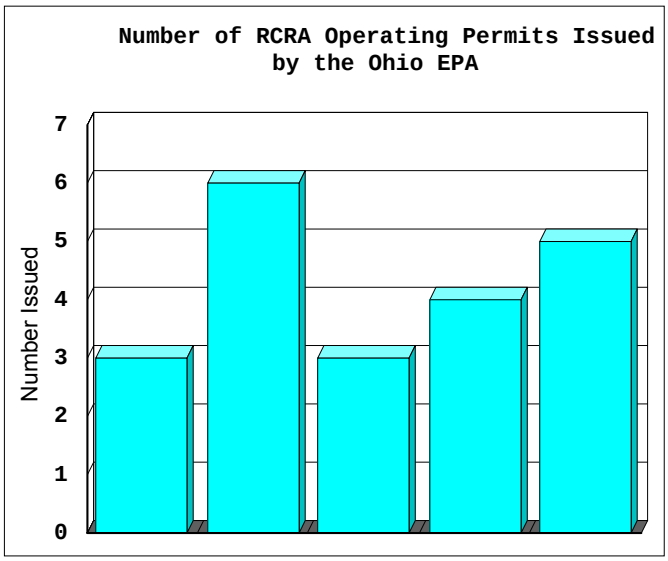
[26]Of the RCRA regulated facilities identified in the Petition, five are in the RCRA permitting universe. These facilities are: BP Oil, Envirosafe, BF Goodrich Hilton Davis, WCI and WTI. The Petitioners stated that they were not seeking a review of the enumerated sites. The Petitioners viewed the sites identified as indicators of a systemic problem in the way OEPA enforces environmental programs. Therefore, the files on these facilities were not reviewed for permitting program deficiencies.

Please note, however, that U.S. EPA has been consistently involved in the BP facilities and the Envirosafe facility in City of Oregon because of U.S. EPA permitted corrective action activities at those sites. Also, U.S. EPA has worked and continues to work extensively with both OEPA and the City of Oregon on issues related to Envirosafe. In addition, U.S. EPA is responsible for closure of a boiler and industrial furnace (BIF) unit at BF Goodrich Hilton Davis (OHD004240313). Furthermore, U.S. EPA issued and is responsible for the RCRA permit at WTI. The WTI federal permit and elements of that permit have undergone extensive review by 1) the General Accounting Office (GAO), 2) a stakeholder recommended technical expert peer review of the risk assessment workplan and the resulting risk assessment and 3) the U.S. EPA Ombudsman, as part of his review of the permitting process at WTI. Additionally, WCI is no longer seeking a RCRA permit but has recently been the subject of an U.S. EPA enforcement action.

In the Columbus office, U.S. EPA found administrative records and mailing lists for the files we audited. In those cases where the public commented on a draft permit, the comments appeared to receive appropriate responses. The guidance documents we reviewed appeared to be consistent with the federal program.

Furthermore, the Northeast District Office (NEDO) filing system (including tracking databases that list boxes, folders, binders, drawings, etc.) seemed very effective. Files appeared to be in order. After spending some time reading through permit files, we deduced that the vast majority of the documents related to numerous permit modifications at each facility. Based on this, it was apparent that the constant stream of permit modifications represent a major portion of the staff workload. The State-wide system for tracking permit modifications seemed appropriate and effective.

Figure 3



U.S. EPA did not see citizen complaint letters in the facility permit files, but we were subsequently told that such complaints are kept in separate files. In Columbus, we reviewed a number of these files, which are kept in OEPA's Public Information Center. At first it appeared that the public notices of draft permit decisions were deficient because they did not mention the location of the administrative record. However, our subsequent review of this requirements in 40 C.F.R. § 124.10(d)(vi) revealed that this requirement only applies to permits issued by U.S. EPA, and not those issued by the State.[27]

[27]40 C.F.R. § 124.10 (d)(vi) is a procedural requirement which States are not required to adopt; however, OEPA Rule 3734.05 meets the general intent of 40 C.F.R. § 124.10 (d)(vi), although the OEPA Rule does not include a reference to the location of the administrative record.

U.S. EPA reviewed the boilerplate language OEPA uses as a model for its permits. U.S. EPA found that boilerplate to be thorough and very similar to language used in federal permits over the years.

3. *Variances/Waivers*

U.S. EPA's also reviewed Ohio's hazardous waste management program with regard to the issuance of variances and exemptions from permits. Variances and exemptions often hinge on interpretations of regulations. However, it is U.S. EPA's position that an authorized state cannot issue any variances or exemptions that would be less stringent than the variances or exemptions that U.S. EPA could issue if the state were not authorized for the RCRA hazardous waste management program. For this part of the review U.S. EPA examined files for variances and exemptions requested from OEPA and reviewed OEPA's decisions.

4. Voluntary Action Program (VAP)

The petition alleged that OEPA was abandoning enforcement efforts by allowing facilities to enter the Voluntary Action Program (VAP) created by Section 3746 of the Ohio Revised Code so
U.S. EPA examined the State's acceptance of facilities into its VAP. U.S. EPA requested a list of all facilities accepted and considered for Ohio's VAP and compared this list to facilities listed in the RCRIS data base as RCRA facilities. While many of the facilities cited by the petition as VAP participants had merely received invitations, subject to eligibility, several facilities subject to RCRA requirements had sought entry and a few were admitted into the VAP.

First, our review uncovered no evidence that OEPA has abandoned or is abandoning enforcement efforts by allowing facilities to enter the State's statutory VAP. As noted above, we preliminarily found that Ohio has an effective RCRA enforcement program.

Secondly, to assess the potential impact, if any, of the VAP on the State's RCRA program, we looked at the Ohio VAP statute, the implementing State regulations, and the application of the program by OEPA. Specifically, U.S. EPA analyzed the potential impact on 1) the State's corrective action permitting authority under Section 3004(u) of RCRA, 2) the State's authority to access information; and 3) the State's obligation to make information available to the public under Section 3006(f) of RCRA.

Based on our review to date and for reasons set forth below, we ask the Ohio Attorney General for an opinion clarifying how Ohio's VAP regulations are consistent with the VAP statutory exclusion, and thus avoid a conflict with RCRA authorization requirements in three contexts: 1) RCRA permitting and corrective action; 2) RCRA required information gathering authority; and 3) RCRA required public availability of information. In doing so, we are mindful of the

innovative memorandum of agreement that U.S. EPA and OEPA signed in Columbus on July 30, 2001, on a voluntary cleanup program that is not based on Ohio's VAP statute, and do not desire an opinion that would inhibit further innovation in cleaning up contaminated property.

a) Background

The VAP statute does not appear to impact State RCRA authority. Section 3746.02 of the VAP statute explicitly precludes participation by properties for which a voluntary action under the VAP statute is precluded by federal law or regulation adopted under federal law, including RCRA. This section would appear to avoid any conflict between RCRA authorization requirements and the VAP. On this basis alone, we would preliminarily find no need to examine the VAP program any further.

The VAP regulations, however, do not appear to precisely mirror the blanket exclusion of the VAP statute described above. Instead of a blanket exclusion, the VAP regulations identify specific types of properties that cannot participate in the VAP. It is not clear that the specific types of properties listed comprise an exhaustive list of all types of properties that are or could be subject to RCRA requirements. Because, under the VAP regulations, some RCRA regulated facilities (i.e. those subject to RCRA requirements) apparently may be allowed to participate in the VAP, we want to confirm that the State nonetheless retains full authority to implement its authorized RCRA program, including the authority: 1) to require all properties subject to corrective action or permitting requirements under RCRA to comply with those requirements; 2) to obtain information about RCRA facilities participating in the VAP; and 3) to provide information about those facilities to the public.

In particular, the VAP regulations apparently exclude: 1) any property which is subject to corrective action requirements under a federal or state RCRA permit (3745-300-02(C)(4)); 2) properties subject to federal enforcement requiring site assessment, removal or remedial activities (3745-300-02(C)(6)); and 3) those portions of a property where closure of a hazardous waste facility or a solid waste facility is required under Chapter 3734 (3745-300-02(C)(7)).

The regulations further define the term "property where closure of a hazardous waste facility is required" to include: 1) those portions of a property on which hazardous waste generator closure of any tank or container area is required under Chapter 3745.52; 2) those portions of a property on which closure of a hazardous waste management unit is required under 3734, including properties where hazardous wastes were treated, stored or disposed of, but not including areas of contamination created by a spill or release of a product that contains hazardous waste constituents not subject to closure requirements; and 3) hazardous waste management units for which closure activities have been completed in accordance with Chapter 3734. The regulations note, however, that where no information obtained pursuant to a Phase I or Phase II property assessment indicates the occurrence of either 1) the accumulation of hazardous waste as a large

quantity generator or 2) the treatment, storage or disposal of hazardous waste, the property is not subject to the hazardous waste closure requirements of Chapter 3734. They also specify that small quantity generators of hazardous waste and conditionally exempt small quantity generators are not subject to hazardous waste generator closure requirements.

We ask that the Ohio Attorney General's opinion specifically address whether or not the omission of some RCRA regulated facilities from the above exclusions is of any legal consequence for the Ohio authorized RCRA program.

b) Impact on Permitting and Corrective Action

The VAP is not a RCRA program and certain VAP cleanup standards do not directly correspond to RCRA corrective action standards. The State regulations appear to exclude properties subject to permit corrective action requirements and properties subject to closure from participation in the program. The list of excluded facilities in the VAP regulations, however, may have omitted some properties subject to permitting and/or corrective action requirements, such as facilities that have closed and currently don't have a permit but may be subject to post-closure care and/or permitting requirements in the future, or RCRA facilities that did not close pursuant to RCRA requirements. Moreover, the VAP regulations appear to rely upon information from VAP property assessments to ascertain RCRA status. We request that the Ohio Attorney General clarify and/or interpret the Ohio VAP regulations to specify whether any facilities subject to RCRA corrective action can participate in the VAP and, if so, whether such facilities can thereby avoid any corrective action and/or permitting requirements.

In practice, it appears that few facilities subject to corrective action under 3004(u) of RCRA have been allowed to participate in the VAP. Two facilities considered for the VAP had interim status units that had not yet been closed to RCRA standards: Copeland, OHD000723894, and Mosler, OHD001502632. Copeland is still under consideration by the State; but Mosler has received a no further action letter. Both facilities have at least one unit that was converted from storage of more than 90 days to storage of less than 90 days. Ohio listed Mosler as a large quantity generator. RCRIS shows Mosler as an interim status converter. In addition, the Steelcraft Manufacturing facility in Blue Ash, Ohio, received a release. The State may need to improve screening of facilities seeking access to the VAP to make sure they qualify under the State's regulations.

c) Impact on State Access to Information

Section 3746.28(C) of the VAP statute provides that any information, documents, reports, or data produced, or any samples collected as a result of entering into and participating in the voluntary action program are not admissible against the person undertaking the voluntary action and are not discoverable in any civil or administrative proceeding against the person undertaking the

voluntary action, except a judicial or administrative proceeding initiated under section 3746.22 of the revised code or rules adopted under 3746.04 of the revised code in connection with an alleged violation of section 3746.20. If the VAP, as implemented in the VAP regulations, does indeed
extend to facilities subject to RCRA hazardous waste requirements, including generators, U.S. EPA would need to ascertain whether this privilege provision applies to such facilities and, if so, what the impact would be on the State's information gathering authorities.

While the State maintains that it retains its full information gathering authority under the VAP, and the State can access a property to review and/or make copies of information and to take its own samples under Section 3746.21, it is not clear that the State could request information or receive or use reports covered by the privilege. Nor is it clear whether the State could quickly access information needed to obtain injunctive relief or use it in court to obtain an injunction. At Section 3746.29, the State appears to retain its authority to respond to emergencies under Sections 3734.13 (20) and (23) of the Ohio Revised Code; but it is not clear that the State can obtain or use information from a VAP participant to get an injunction.

Section 3746.02, which precludes participation by properties for which a voluntary action would be precluded by federal law or regulation, might be read to avoid any limitation on the State's RCRA authorities. We request an opinion from the Ohio Attorney General clarifying the application and scope of the VAP privilege and whether or not it applies to or impacts facilities regulated pursuant to Ohio's authorized RCRA programs.

d) Impact on Public Availability of Information

Section 3006(f) of RCRA, 42 U.S.C. § 6926(f) requires State program to provide for public availability of information obtained by the State regarding facilities and sites for the treatment, storage and disposal of hazardous waste in substantially the same manner, and to the same degree as would U.S. EPA. Accordingly, we request an opinion from the Ohio Attorney General addressing the question whether or not the State, under its laws, must release information in its files concerning a RCRA facility participating in the VAP to the same degree and extent as U.S. EPA must release information under the federal Freedom of Information Act (FOIA). While Section 3746.31 of the VAP statute would appear to require the Director to turn over information on the list provided under 3746(F), this section does not address information that is not on that list.

Again, Section 3746.02 of the VAP statute might be read to preclude applicability of the privilege provisions of the VAP law for such properties or to impose limitations on the privilege akin to those in the amended Audit Law.

As discussed above, an opinion from the Ohio Attorney General interpreting the VAP statute and its implementing regulations would help U.S. EPA ascertain whether the VAP law, as interpreted and implemented, limits any of OEPA's authorities in such a way that violates the minimum federal legal standards required for federally authorized State RCRA Subtitle C programs.

B. SUBTITLE D

Although the petition requests that U.S. EPA withdraw approval of Ohio's Solid Waste Management Plan, a review of the petitioners' allegations reveals that the claims in the petition are actually a request to withdraw U.S. EPA's determination of adequacy of Ohio's MSWLF permit program. Ohio's Solid Waste Management Plan was approved by U.S. EPA on November 14, 1985 (50 Fed. Reg. 47049 (11/14/85)). The purpose of Ohio's Solid Waste Management Plan, as approved, was to identify State, local, and regional responsibilities for solid waste management, encourage resource conservation and recovery, and develop and apply State controls to provide for environmentally sound solid waste disposal practices. The purpose of Ohio's MSWLF permit program is to ensure that municipal solid waste landfills comply with the revised federal criteria (also referred to as "Subtitle D" criteria) set forth in 40 C.F.R. Part 258 (59 Fed. Reg. 30353-30356 (6/13/94)). This review evaluates all of the petitioner's concerns relating to Ohio's MSWLF permit program.

In evaluating the solid waste program claims set forth in the petition, we focused on whether OEPA sufficiently monitored compliance with the revised federal criteria and conducted enforcement actions against the owners or operators of the five specific facilities petitioners identified. It is important to note that U.S. EPA only has the authority to require enforcement of the provisions of State law which are comparable to the revised federal criteria. It is the prerogative of the State to apply those components of State law that are more stringent than the federal criteria. See 63 Fed. Reg. 57026, 57029 - 33 (Oct. 23, 1998).

Enforceable standards that are technically comparable to U.S. EPA's revised criteria for MSWLFs are contained in Ohio law (Ohio Revised Code 3734 and 3745-27 and implementing regulations). Many of the provisions in the State regulations are significantly more stringent than the federal MSWLF criteria. OEPA retains the authority to issue permits for new and existing MSWLFs. In addition, OEPA provides public notice, holds public hearings during permit issuance and provides public notice of enforcement actions through press releases.

We investigated the solid waste program claims by visiting OEPA's Southwest District and Headquarters offices to review facility files and to interview staff involved with the five specified sites. In addition, we contacted enforcement and permitting officials from the Hamilton County Department of Environmental Services (DOES) and the Regional Air Pollution Control Authority (RAPCA). U.S. EPA staff in the Waste, Pesticides and Toxics Division

evaluated the concerns relating to 42 U.S.C. § 6943(a) and 40 C.F.R. §§ 258.23 (gas monitoring), 258.40 (design requirements), 258.51 (groundwater monitoring), and 258.53(a) (groundwater sampling and analysis) according to our "Expanded Protocol for Responding to Subtitle D - Related Issues." found in the Appendix to this report. U.S. EPA staff in the Waste, Pesticides and Toxics Division also reviewed the affidavits relating to the Subtitle D program that the petitioners submitted in the summer of 2000. U.S. EPA staff from the RCRA Division reviewed concerns relating to 40 C.F.R. § 258.27(a) in coordination with U.S. EPA's Water Division. Those relating to 40 C.F.R. § 258.24 were reviewed within the context of a broader review of the OEPA's air program by U.S. EPA's Air and Radiation Division. Finally, U.S. EPA's Office of Regional Counsel reviewed enforcement activities and overall program resources related to MSWLFs.

VI. SPECIFIC FACILITIES

A. SUBTITLE C

1. *Enforcement*

Georgia-Pacific Resin (OHD054026679)
EPA reviewed information in the file regarding the September 10, 1997, explosion event at this installation. OEPA conducted a RCRA inspection at this installation on October 28, 1997, and wrote a Field Inspection Report detailing the findings related to the inspection and the explosion event. No violations of the hazardous waste regulations were detected at the time of the inspection. A December 22, 1994 enforcement order issued by OEPA requires the installation to perform a Remedial Investigation/Feasibility Study to assess any potential contamination on-site and to propose methods to address the contamination.

River Valley High School, Marion
This site is not regulated as a RCRA Subtitle C hazardous waste installation. The Army Corps of Engineers is conducting an investigation and cleanup of this installation, with oversight from both the Ohio and U.S. EPA Emergency and Remedial Response Divisions.

Tremont Sanitary Landfill, Springfield
This site is not regulated as a RCRA Subtitle C hazardous waste installation, but is regulated under Subtitle D of RCRA. A discussion of this installation can be found in the Subtitle D section of this report.

Bond Road Landfill, Whitewater Township

This site is not regulated as a RCRA Subtitle C hazardous waste installation, but is regulated under Subtitle D of RCRA. A discussion of this installation can be found in the Subtitle D section of this report.

AK Steel (OHD004234480)[28]

OEPA conducted RCRA inspections at this installation on February 6, 1996, February 20, 1997, May 23, 1997, March 4, 1998, November 4, 1998, April 29, 1999, July 12, 1999, and April 20, 2000. OEPA sent the installation Notices of Violation on March 24, 1997, March 30, 1998, and April 24, 2000, regarding violations found during these inspections. OEPA referred this facility to the Attorney General's Office on March 4, 1991, for violations involving the storage and treatment of hazardous waste without a permit. On October 22, 1997, OEPA issued a Director's Final Findings and Orders required the facility to address contamination in an on-site landfill through RCRA closure. The State has also intervened in U.S. EPA's litigation to pursue AK Steel for environmental violations.

WTI (OHD980613541)[29]

OEPA conducts semi-annual Compliance Evaluation Inspections (CEIs) of this facility in addition to daily inspections conducted by two on-site inspectors. OEPA sent Notices of Violation regarding violations detected during these inspections on September 27, 1996, March 11, 1997, October 22, 1997, March 25, 1998, October 14, 1998, April 23, 1999, May 17, 1999, June 29, 1999, August 19, 1999, October 25, 1999, February 24, 2000, April 26, 2000, April 28, 2000, July 28, 2000 and August 21, 2000. OEPA issued administrative enforcement orders to this facility in 1994 addressing permit violations and seeking a $60,900 civil penalty. A Director's Final Findings and Orders was also issued on September 27, 2000, addressing past permit violations and requiring a penalty of $135,000. U.S. EPA conducted an independent review of OEPA's hazardous waste inspection procedures and activities at the WTI facility. Based on the information obtained from this review, U.S. EPA determined that OEPA conducts adequate hazardous waste inspection activities at this facility.

[28]U.S. EPA is currently litigating matters resulting from its 1999 multi-media inspection at the AK Steel Corporation plant in Middletown. U.S. EPA also issued a RCRA 7003 order to A K Steel in August of 2000 to address releases to Dick's Creek and a landfill tributary.

[29]U.S. EPA issued a complaint against WTI on August 23, 1993. U.S. EPA also participated in a RCRA compliance evaluation inspection of WTI in June of 2000.

Envirosafe (OHD045243706)[30]
OEPA conducts semi-annual CEIs of this facility in addition to daily inspections conducted by three on-site inspectors. OEPA sent Notices of Violation regarding violations detected during these inspections on January 31, 1996, July 9, 1996, September 17, 1996, March 24, 1997, May 8, 1997, August 21, 1997, February 20, 1998, March 1, 1998, September 9, 1998, March 11, 1999, April 13, 1999, June 18, 1999, June 30, 1999, October 14, 1999, December 16, 1999, February 18, 2000, and May 9, 2000. On March 17, 1998, OEPA referred the facility to the Attorney General's Office for enforcement. On March 25, 1999 OEPA issued a Unilateral Order requiring the facility to remove hazardous waste from its on-site landfill, and requiring the testing of each load of waste going into the landfill. On April 20, 2000, the Attorney General's Office filed a Consent Order addressing the referred violations and requiring payment of a $200,000 civil penalty.

Brush Wellman (OHD004212999)[31]
OEPA conducted RCRA CEIs at this installation on June 19, 1996, June 4, 1997, September 29, 1998, and June 14, 2000. OEPA sent Notices of Violation regarding violations detected during these inspections on June 28, 1996, November 12, 1998, January 4, 1999, and June 29, 2000. OEPA had referred this facility to the Attorney General's Office on April 12, 1993, for storage of hazardous waste without a permit, failure to properly evaluate waste, and failure to properly manage hazardous waste containers. A Consent Order was issued on November 12, 1996, addressing these violations and requiring payment of a $75,000 civil penalty, $50,000 to a local landfill reclamation trust fund, and implementation of a supplemental environmental project at the facility.

PPG Industries (OHD004304689)[32]
OEPA conducted RCRA CEIs at this installation on January 2, 1996, September 4, 1996, May 12, 1997, May 26, 1998, May 4, 1999, and May 2, 2000. OEPA sent Notices of Violation regarding violations detected during these inspections on January 23, 1996, September 4, 1996, June 10, 1997, June 29, 1998, June 9, 1999, and May 25, 2000.

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[30]U.S. EPA issued a Complaint in 1989 against Envirosafe concerning violations of the land disposal treatment standards. A Consent Agreement resolving the Complaint was issued in 1989. U.S. EPA also issued a Complaint against Envirosafe in 1997 concerning releases of hazardous waste from a containment building. A Consent Agreement resolving those violations was issued in 1998.

[31]U.S. EPA conducted a multi-media inspection of Brush Wellman in May of 2000.

[32]U.S. EPA issued a Complaint against PPG in 1993 for violations of the hazardous waste air emission standards. U.S. EPA issued a Consent Agreement resolving the Complaint in 1995.

OEPA issued an administrative enforcement order in 1989 requiring this installation to submit a remedial plan for investigating and addressing on-site contamination and for payment of OEPA oversight costs. OEPA reviewed the results of the investigation and approved a clean-up plan in 1999. The installation has begun implementation of this clean-up plan.

Elano Corporation (OHD00424113)
OEPA conducted a RCRA CEI at this installation on June 10, 1998. An on-site OEPA contractor has also provided oversight at this facility. The Ohio Attorney General's Office issued a Consent Order against this installation and General Electric requiring an investigation and cleanup of any contamination at the site and payment of a $1,000,000 civil penalty. The installation has submitted a draft Remediation Investigation Report to OEPA for review. OEPA has also investigated allegations of illegal disposal of solvents at the installation's Plant 1, but did not find evidence to support the allegations.

Worthington Custom Plastic (OHD080927940)
OEPA conducted a RCRA CEI at this installation on March 8, 1999. OEPA also inspected this installation in conjunction with U.S. EPA on August 3, 1995 in response to an allegation of illegal hazardous waste disposal at this site. No evidence was found during the inspection which could prove this allegation. No violations of the hazardous waste regulations were detected during the March 8, 1999 inspection.

2. Permitting

Chemical Solvents (OHD052937885)
In the Part A section of its permit, the owner is listed as "Ed Pavlish," but the owner signature line is signed by "William Garrett, President." In addition, an inconsistency was found with the facility's closure plans found in the Part B permit application and its actual closure reports. Based on the approved closure plan, four soil borings were to be taken within three feet of the concrete pad. According to the certification, no soil boring were taken, but an OEPA memo dated January 19, 2000 stated, ". . . the closure was completed according to the approved closure plan in Chemical Solvent, Inc.'s Ohio Hazardous Waste Facility Installation and Operation Permit Renewal Application." No record was found in the files indicating the closure plan was modified from the original Part B Renewal Application to eliminate the four soil borings.

Amoco (OHD981529688)
In the Part A section of the permit the owner is listed as Amoco Corporation and the operator is listed as the subsidiary Amoco Performance Products. The signature for both owner and operator is by the plant manager, an employee of the subsidiary company.
Englehard (OHD004203519)

The 1991 Part A (the basis of the permit) lists owner and operator as Englehard but facility name as Harshaw. The 1997 Part A lists Englehard as the operator but Harshaw as the owner while other information in file described Harshaw as subsidiary of Englehard. In both cases, both the owner signature and operator signature are provided by the same person, the "general manager."

In addition, when comparing RCRA Information System (RCRIS) data to the information actually found in the facility files, U.S. EPA found that the permit issuance dates were inconsistent. This problem is probably due to a data entry error.

Chemtron (OHD066060609)
When comparing RCRIS data to the information actually found in the facility files, U.S. EPA found that the permit issuance dates were inconsistent. This problem is probably due to a data entry error.

Hukill (OHD001926740)
This facility closed units as landfills that require post-closure care. The facility's tank farm and cistern units' soils were addressed under a Consent Agreement and Final Order (CAFO) that directed corrective action; however, this CAFO did not address the contaminated groundwater. The facility appears to be addressing groundwater contamination by a "post-closure monitoring plan," which does not seem to address remediation of the groundwater. Furthermore, the facility has not assessed the risks to human health or the environment, evaluated other potential remediation methods, or completely evaluated the extent of the contamination. The facility's proposed post-closure monitoring plan does not seem to address the intent of the corrective action program nor does it provide for public participation. It is unclear under what authority the facility intends to "monitor" the groundwater contamination.

Also, when comparing RCRIS data to the information actually found in the facility files, U.S. EPA found that the facility's post closure activities were not recorded in RCRIS.

Detrex (OHD080158702)
A Permittee must submit a renewal application at least 180 days before the expiration date of the effective permit, unless permission for a later date has been granted by the Director. This facility appears to have submitted its renewal application about 45 days past the 180 day requirement. No documentation was found in the file to indicate the Director granted permission for a later date of submission.

Parker Hannifin (OHD046426409)

This facility closed units as landfills that require post-closure care. Specifically, it closed its dry wells as landfills with Interim Status groundwater monitoring. The disposal activity associated with the dry wells appears to have contaminated the groundwater and the facility is undertaking some type of treatment activity. The facility has not been issued a post-closure or corrective action permit. According to the files, the units were certified closed in 1995, with a final letter to the facility being sent on May 28, 1996. There does not appear to be an instrument in place to address the groundwater remediation and post-closure requirements.

Envirite (OHD980568992)
No issues were raised when reviewing this facility's permit and closure files.

RMI Titanium (OHD980683544)
No issues were raised when reviewing this facility's permit and closure files.

Waste Management of Ohio (OHD020273819)
No issues were raised when reviewing this facility's permit and closure files.

Harrison (OHD041082025)
No issues were raised when reviewing this facility's permit and closure files.

Cytec (OHD004341509)
No issues were raised when reviewing this facility's permit and closure files.

With respect to the Ohio VAP, the State issued a "no further action" letter to Mosler (OHD001502632) and is considering participation for a second facility with RCRA obligations. The State has also issued a release for the Steelcraft facility in Blue Ash, Ohio. The units at this facility, however, are either clean closed or protective filers and we have no record of corrective action activity. Under the VAP, a facility may voluntarily remediate its property without RCRA oversight, but must show that the cleanup levels achieved meet the RCRA program goals. It is not clear whether Ohio's acceptance of the Mosler cleanup would preclude Ohio from future action at the site, since both the facility and the State should have been aware of the facility status which by Ohio's own rules would have precluded Mosler's participation.

B. SUBTITLE D

Clarkco Sanitary Landfill (Ohio PTI 05-5323)
OEPA issued the Danis Clarkco Landfill Company a permit to install (PTI) to construct the Clarkco Sanitary Landfill on February 8, 1996. Since the facility is neither constructed nor operational, there were no enforcement or monitoring files to review.

An extensive file review and interviews with OEPA staff focused on background information, general correspondence, technical reports, and Environmental Review and Appeals Commission files relating to the appeal of the permit by a citizens' group[33]. The file review and interviews with technical staff did not reveal failures by OEPA to require controls in the PTI that would ensure that waste would be disposed of in accordance with federal requirements.

Tremont Sanitary Landfill (Ohio PTI 05-4867)[34]
OEPA issued Director's Final Findings and Orders to the Tremont Landfill Company denying permission to expand and requiring closure of the Tremont Sanitary Landfill on March 1, 1994. The facility is currently closed and capped, and ongoing groundwater, surface water and gas monitoring and final cover maintenance is taking place at the site. The site was closed in accordance with requirements at least as stringent as the closure requirements in the revised federal criteria (40 C.F.R. § 258.60). An extensive file review and interviews with OEPA staff focused on post-closure and monitoring files.

Approved control plans are in place for explosive gases at the facility and exceedances of the lower explosive limit for methane gas at the facility boundary have been reported. When such incidents occur, OEPA has ordered actions to correct problems and maintain compliance with the control plans consistent with the procedures outlined in the revised federal criteria (40 C.F.R. § 258.23).

The Regional Air Pollution Control Authority (RAPCA) and Clark County Health Department work in cooperation with OEPA to permit and enforce provisions of the Clean Air Act relating to MSWLFs at the Tremont City Landfill.

A groundwater monitoring network is in place and the site is currently in detection monitoring for several constituents of concern according to a work plan approved by

[33]Upon request by the citizens' group Citizens For Water and U.S. Congressman Hobson, U.S. EPA Region 5 attended and monitored Environmental Review and Appeals Commission hearings held relating to the Permit to Install at this facility in October 1997.

[34]U.S. EPA has reviewed data provided by Citizens For Water (CF Water) and has conducted sampling at the Tremont City Landfill site in Clark County.

OEPA. OEPA's actions at the site relating to groundwater contamination are consistent with the groundwater monitoring and remediation procedures contained in the revised federal criteria (40 C.F.R. §§ 258.54 - 258.58)[35].

The facility is included in a storm water general permit under the National Pollutant Discharge Elimination System (NPDES Permit # OHR102649), and OEPA requires compliance with the permit. Corrective measures have been required and implemented to address leachate outbreaks from the surface of the landfill in accordance with appropriate enforcement procedures.

ELDA Recycling and Disposal Facility (Ohio PTI 05-6894)[36]
OEPA issued Director's Final Findings and Orders to Waste Management of Ohio, Inc. denying permission to expand and requiring closure of the ELDA Recycling and Disposal Facility on February 5, 1997. The facility is currently closed and capped, and ongoing groundwater and gas monitoring and final cover maintenance is taking place at the site. The site was closed in accordance with requirements at least as stringent as the closure requirements in the revised federal criteria (40 C.F.R. § 258.60). An extensive file review and interviews with OEPA staff focused on enforcement, closure and monitoring files.

In response to gas migration and exceedances of the lower explosive limit for methane gas at the facility boundary, OEPA issued Director's Final Findings and Orders on January 21, 1997, requiring an extensive explosive gas monitoring program and prompt remediation of gas migration problems. These orders were intended to abate or minimize the formation and migration of explosive gas at the facility. OEPA's order to correct problems and maintain compliance is consistent the procedures outlined in the revised federal criteria (40 C.F.R. § 258.23).

The City of Cincinnati Health Department (CHD) and Hamilton County Department of Environmental Services (DOES) work in cooperation with OEPA to permit and enforce provisions of the Clean Air Act relating to MSWLFs at the ELDA landfill. DOES is primarily responsible for issues regarding air emissions associated with the flare and gas recovery system. CHD is primarily responsible for issues regarding odor complaints at the facility.

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[35]In June 2000, U.S. EPA's Superfund program initiated a field investigation to determine if the site warrants remedial action.

[36]At the ELDA landfill in Cincinnati, U.S. EPA reviewed State, county and city permit documents, attended public hearings, provided testimony in the citizens' suit and worked with Waste Management and CUFA to address community concerns.

An approved groundwater monitoring plan is in place for the facility and sampling is taking place in accordance with the plan. The plan is consistent with the groundwater monitoring procedures contained in the revised federal criteria (40 §§ 258.53 - 258.54).

Corrective measures have been required and implemented to address leachate outbreaks from the surface of the landfill in accordance with appropriate enforcement procedures.

Bond Road Landfill (Ohio PTI 05-7097)
Ohio issued the Monsanto Company a PTI allowing a vertical expansion of the Bond Road Landfill on March 17, 1998. The facility is operational, though limited disposal of municipal solid waste takes place at the site. The site was designed in accordance with requirements at least as stringent as the design requirements in the revised federal criteria (40 C.F.R. § 258.40). An extensive file review and interviews with OEPA staff focused on enforcement, permit and monitoring files.

Explosive gas monitoring takes place at the site according to a plan approved by OEPA. An evaluation of the monitoring reports indicates that little or no gas is generated or detected at the site. The Hamilton County DOES works in cooperation with OEPA to permit and enforce provisions of the Clean Air Act relating to MSWLFs at the Bond Road Landfill.

OEPA issued a NPDES permit to Monsanto Bond Road Landfill (OH0115690) on March 17, 1998. The permit covered a sedimentation pond and storm water discharges to the east and west forks of Fox Run. The permit does not authorize the discharge of leachate or any waters that have come in contact with the active portions of the landfill receiving the solid waste. The Ohio Attorney General's Office held a public hearing regarding an appeal of the NPDES permit by citizens.

A groundwater monitoring network is in place and the site is in detection monitoring for several constituents of concern according to an approved work plan. OEPA's actions at the site relating to groundwater contamination are consistent with the groundwater detection and assessment monitoring procedures contained in the revised federal criteria (40 C.F.R. §§ 258.54 - 258.55).

Rumpke Sanitary Landfill (Ohio PTI 05-3567)
OEPA issued Rumpke Sanitary Landfill, Inc. a PTI allowing a vertical expansion of the Rumpke Sanitary Landfill on February 17, 1994. The facility is operational and has undergone major reconstruction after a massive landslide took place on the northwest slope on March 9, 1996. An extensive file review and interviews with OEPA staff focused on enforcement, permit and monitoring files.

In response to gas migration problems, a gas monitoring program and remediation have been required by OEPA. These actions were intended to abate or minimize the formation and migration of explosive gas at the facility. OEPA's actions to correct problems and maintain compliance is consistent with the procedures outlined in the revised federal criteria (40 C.F.R. § 258.23). The City of Cincinnati Health Department (CHD) and Hamilton County Department of Environmental Services (DOES) work in cooperation with OEPA to permit and enforce provisions of the Clean Air Act relating to MSWLFs at the Rumpke landfill.

An approved groundwater monitoring plan is in place for the facility and sampling is taking place in accordance with the plan. The plan is consistent with the groundwater monitoring procedures contained in the revised federal criteria (40 C.F.R. §§ 258.53 - 258.54).

A massive failure of the northwest slope of the facility caused previously deposited waste to flow into unlined portions of the facility. In an immediate and substantial effort to mitigate, eliminate, or prevent nuisances, health hazards, or pollution resulting from the slope failure, OEPA issued a temporary variance to Rumpke to accept waste for the purpose of emergency stabilization of the slope failure area[37]. The placement of solid waste at the base of the slope failure area, where a liner system was still under construction, violated both State and federal solid waste laws. This practice was abated as soon as geotechnical experts determined that the failed slope was stabilized, and Rumpke was subsequently fined $1 million for the circumstances leading to the slope failure.

Corrective measures have been required and implemented to address leachate outbreaks from the surface of the landfill in accordance with appropriate enforcement procedures.

VII. EVALUATION OF SUFFICIENCY OF EVIDENCE TO COMMENCE WITHDRAWAL PROCEEDINGS

[37] U.S. EPA closely monitored the actions of OEPA following the massive slope failure and OEPA consulted with Region 5 staff in the immediate response actions to protect human health and the environment from the potential threats posed by the exposed waste.

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A. SUBTITLE C

1. *Enforcement Actions*

Based on U.S. EPA's evaluation of the claims set forth in the petition and a review of the annual audits of Ohio's hazardous waste enforcement program from 1995 through 2000, U.S. EPA does not believe 1) that the evidence substantiates petitioners' allegations that OEPA avoids enforcing its environmental laws or fails to inspect and monitor activities subject to regulation, or 2) constitutes sufficient cause under 40 C.F.R. § 271.22(a)(3) to warrant commencement of formal withdrawal proceedings.

2. *Permits*

Furthermore, based on the criteria found in 40 C.F.R. § 271.22 and the information reviewed to date, there does not appear to be sufficient evidence 1) to substantiate the petitioners' allegation that OEPA fails to exercise control over authorized hazardous waste program activities or 2) to substantiate commencement of formal withdrawal proceedings. In general, U.S. EPA found that the State RCRA permits were properly issued, sufficiently detailed, and consistent with the language used in federal RCRA permits. Technical requirements for containers and tanks were checked against 40 C.F.R. §§ 264.190 and 264.170, and found to address all relevant requirements.

Our file review did not substantiate the allegations that OEPA had failed to exercise control, issued permits that do not conform to the requirements of RCRA, or failed to implement the hazardous waste program in a manner consistent with or equivalent to the federal program requirements. On the contrary, our review concluded that, in general, OEPA has performed adequately in these matters of RCRA permit issuance.

3. *Equivalence with federal program requirements*

Based on the criteria found at 40 C.F.R. § 271.22 and the information reviewed to date, there does not appear to be sufficient evidence 1) to substantiate the petitioners' allegation that OEPA fails to implement the hazardous waste program in a manner consistent with or equivalent to the federal program requirements, or 2) to warrant commencement of withdrawal proceedings.

a. *Variances/Waivers*

While U.S. EPA does not agree with every OEPA variance/waiver decision, OEPA can support

its decisions based on the RCRA regulations. Most of the exemption issues under review related to the distinction between recycling and reclamation. The issues raised in this review for issuance of exemptions include: application of a different district court opinion issued in the period between the time an U.S. EPA rule is vacated and reinstituted; application of the distinction between recycling and reclamation; application of Land Disposal Restrictions (LDR) to characteristic waste with potential health impacts; application of the alcohol ignitability characteristic exclusion beyond alcoholic beverages; and application of delisting requirements for listed waste regardless of the waste contaminant content. Many RCRA regulations are complex and are not easily applied to all situations that arise. Regarding some variance applications, U.S. EPA might have made different decisions than Ohio. However, after discussing these applications with OEPA, U.S. EPA understands OEPA's regulatory decisions and OEPA's reasoning in these difficult cases. To avoid potential future disagreements, U.S. EPA has instituted a quarterly call to discuss variance issues.

4. *VAP*

By the express terms of its broad exclusion, the VAP statute appears to avoid any conflict with RCRA authorization requirements. As the State regulations and practice seem to allow certain RCRA facilities to participate in the VAP, however, we request an opinion from the State Attorney General interpreting the VAP statute and regulations. The opinion should address how the VAP avoids limiting the State's authority for requiring permits and corrective action, accessing information, and releasing information.

B. SUBTITLE D

Based on the criteria set forth in 40 C.F.R. § 239.13 and U.S. EPA's evaluation of claims set forth in the petition, there does not appear to be sufficient substantive information to indicate that U.S. EPA should commence formal withdrawal proceedings based on failure of the current Ohio MSWLF permit program to currently meet the minimum federal requirements for an adequate program under § 4005(c)(1)(C) of RCRA, 42 U.S.C. § 6945(c)(1)(C). All requirements in the Ohio Revised Code (ORC 3734 and 3745-27) and Ohio's MSWLF permitting and enforcement program appear to meet or exceed the minimum federal requirements. OEPA appears to be implementing the program appropriately.

VIII. FOLLOW-UP ACTION

We request an opinion form the Ohio Attorney General regarding the impact, if any, of the VAP

on RCRA Subtitle C authorization requirements for permitting and corrective action information gathering, and availability of information.

During the course of our review, we have also developed a list of suggestions and recommendation for enhancing the State RCRA program. Since these suggestions and recommendations do not bear directly on the withdrawal criteria, we are conveying them to the State separately.

REVIEW OF OHIO LEGAL ENFORCEMENT OFFICES

SUMMARY

In addition to reviewing the various Ohio programs mentioned in the petition, U.S. EPA reviewed the activities of the State legal offices that pursue enforcement on behalf of the Ohio Environmental Protection Agency (OEPA) program offices: the OEPA Office of Legal Services (OLS) and, in the Office of the Ohio Attorney General (OAG), its Environmental Enforcement Section and its Bureau of Criminal Identification and Investigation (CRIM). This part of the report provides an overview of the functions and organization of these Ohio environmental enforcement offices, and addresses the overall management of cases once they are reviewed by or referred to a legal enforcement office. In addition to answering questions and providing opinions on certain issues put to them, as discussed in this part, the offices submitted case docket materials summarizing their enforcement cases and copies of settlement documents (see Attachments LEO-01 through LEO-05).

We preliminarily conclude that once a determination was made to pursue enforcement on behalf of the various programs, the legal offices followed through and acted pursuant to their authorities to enforce the matters before them; and that they initiate, litigate (or prosecute) and conclude a significant number of enforcement cases. In many cases, they obtained settlements with significant penalties.

In most instances, the OEPA Office of Legal Services performs an advisory role in the enforcement of OEPA cases and matters. Although it can obtain penalties that parties agree to pay, OEPA lacks the authority to pursue penalties unilaterally. We preliminarily conclude that overall, OEPA has pursued enforcement, within the bounds of its authorities, in a significant number of cases and that a significant number of cases, which OEPA could not resolve at its level, have been referred to and prosecuted by the Ohio Attorney General's Office, which does have the authority to seek penalties and injunctive relief unilaterally through legal action in the Ohio courts. The criminal enforcement offices provide extensive training on criminal law and procedures and have achieved a significant number of prosecutions of environmental crimes in an excellent mix of program areas. Our review to date suggests that the Ohio criminal environmental program may be considered one of the best in the nation, although we noted a decreasing trend in the numbers of prosecutions since 1995.

August 30, 2001 Draft Report on Review of Ohio Programs
Legal Enforcement Offices: Executive Summary (ENF)

U.S. EPA's preliminary conclusion is that Ohio agencies initiate, prosecute and conclude a significant number of environmental enforcement cases. In particular, Ohio's criminal environmental enforcement program is considered among the best in the nation. Of note, Ohio has administratively and/or civilly enforced against and/or resolved violations at 28 of the 57 facilities mentioned in the petitioners' August 4, 1999 supplement, and has conducted investigations at many of the others. Working in partnership with OEPA, U.S. EPA has enforced against or otherwise addressed most of the remaining facilities that have or have had identified enforcement problems. This is not to say, however, that all violations at all of the listed facilities have been addressed. While either OEPA or U.S. EPA has already addressed certain violations at those facilities, there may be other violations that have not yet been addressed and/or remedied. U.S. EPA preliminarily finds that Ohio maintains an active enforcement presence in the environmental programs U.S. EPA reviewed.

Because the petitioners had asked us to consider enforcement from a multi-media perspective, we also inquired whether and how the State pursued cases for violations of different environmental statute at the same facility. The State did not have a multi-media strategy for enforcement. The lack of multi-media enforcement, however, does not affect authorization, delegation, and/or approval under the federal environmental laws, as these laws are media specific. For example, the Clean Water Act provides requirements and authorities for States to bring water enforcement cases, but does not require that such cases be combined with Clean Air Act or RCRA cases.

In almost instances, the individual environmental program within OEPA initiates enforcement of violations in that program. For an assessment of how effectively each program mentioned in the petition pursues enforcement for violations in that program, please refer to the part of this report which addresses that program, *infra*.

August 30, 2001 Draft Report on Review of Ohio Programs
Ohio Environmental Protection Agency, Office of Legal Services (OLS)

PROTOCOL AND ANSWERS FOR DISCUSSIONS WITH THE OHIO ENVIRONMENTAL PROTECTION AGENCY OFFICE OF LEGAL SERVICES REGARDING OHIO ENVIRONMENTAL PROGRAMS

[On April 18, 2000, representatives of U.S. EPA's Office of Regional Counsel met with representatives of the Ohio Environmental Protection Agency (OEPA) Office of Legal Services (OLS) to conduct a program review. Bryan Zima of the Ohio Attorney General's Office (OAG) also attended. Joe Koncelik was the main contact for the OLS, although Ed Tormey represented the Hazardous Waste Section and Mark Navarre answered questions on the VAP program.

[Mr. Koncelik expressed frustration with the program review process and the number of questions posed in the protocol. He also requested to be copied on questions directed to the OLS. Prior to the meeting, OEPA requested that U.S. EPA array our questions on a program-by-program basis. Because this design necessitated the repetition of many questions, we have reconsolidated the questions to eliminate redundancies and have inserted the OEPA responses in italics.]

I. GENERAL QUESTIONS

1. How many attorneys were employed by OEPA in each of years 1995, 1996, 1997, 1998, 1999? Please provide the data for each year in terms of both number of persons and number of full time equivalents (FTEs) measured on December 31 of each year.

ANSWER: For the period from 1995 through 1999 the number of attorney FTEs for OEPA has ranged from 22 to 26, depending upon vacancies. For the entire period, OEPA has employed 6 supervisory attorneys, comprised of 1 second-level supervisor-manager and 5 first level supervisors. One supervisory attorney is responsible for legal issues in the emergency response and voluntary action programs (VAP), another for air issues, another for surface and drinking water issues, yet another for hazardous waste issues, and a fifth for solid waste legal issues. Three staff attorneys presently report directly to the 2nd level attorney manager. Another way to account for OEPA attorneys is by FTE, as follows:

a.	*Emergency response and the VAP (includes supervisor)*	*4.5 FTEs*
b.	*Air (includes supervisor)*	*3.5 FTEs*
c.	*Surface and drinking water (includes supervisor)*	*4.0 FTEs*
d.	*Hazardous waste (includes supervisor)*	*3.5 FTEs*
e.	*Solid Waste (includes supervisor)*	*2.5 FTEs*

f.	*Chief Hearing Examiners*	*2.0 FTEs*
g.	*Employment and ethics law*	*1.0 FTE*
h.	*Deputy Director (2nd level attorney manager)*	*1.0 FTE*
	Total	*22.0 FTEs*

Prior to May of 1999, each staff attorney had responsibility (with some exceptions) for legal issues in only one program. After the realignment in May 1999, roughly half of the staff attorneys have multi-program and cross-program assignments, while roughly half continue to concentrate their legal expertise on one program. For the office as a whole, work on enforcement cases, including Director's Findings & Orders, referrals to the Attorney General's Office and other enforcement advice, constitutes roughly 30 to 40% of the total, varying somewhat by program. General Counsel duties also comprise roughly 30 to 40% of the total effort, the exact percentage again varying by program. The remainder of the overall legal effort, roughly 20 to 40% of the total, again the exact percentage of which varies by the program, is devoted to rule making and permitting matters.

2. Describe the organizational structure of those attorneys, including how attorneys are divided between headquarters, district offices and local offices.

ANSWER: See the Answer to Item No. 1 above. All OEPA attorneys work out of the Columbus office.

3. Please describe the principal duties of staff attorneys, senior attorneys, 1st level supervisors, and 2nd level attorney-managers.

ANSWER: See Answer to Item No. 1 above.

4. At what procedural point during the development of an enforcement case is an attorney assigned to a matter?

ANSWER: The exact procedural point for assigning an attorney to an enforcement matter depends on the case or matter. In some instances, attorneys counsel inspectors early in the development of a case. In other enforcement matters, the attorney is assigned later to counsel on the development of an enforcement case. The assignment can also occur at various stages during that development. In still other cases, the attorney may be assigned a short time before the case is referred to the Attorney General to conduct a legal review of the evidence. OEPA representatives noted that, of course, a thorough legal review is conducted of all enforcement cases referred to the Ohio Attorney General's Office.

5. How do legal managers supervise the work of staff attorneys?

ANSWER: In addition to supervisory review of written legal work, the enforcement committee for each program conducts regular targeting and screening of enforcement cases throughout the State of Ohio. The committee members are comprised of program and attorney supervisors and managers for each program. Attorneys from the Attorney General's Office also attend these meetings. Program and attorney staff case assignees and teams attend from time to time to present individual cases to the appropriate enforcement committee. In addition, the committees discuss referred and filed cases with representatives of the Ohio Attorney General's Office. Among its principal functions, the enforcement committees serve to ensure that enforcement teams use their time efficiently, that work on cases will lead to timely and appropriate enforcement actions and results, and that limited enforcement resources are properly allocated to important cases.

6. Please describe/provide a copy of OEPA's overall policy on pursuing enforcement actions.

ANSWER: OEPA does not have a written overall policy on enforcement. Most legal programs indicated that they follow U.S. EPA's timely and appropriate enforcement response guidance. OEPA and the Attorney General's Office, however, entered into a Memorandum of Understanding (MOU) in the 1970s concerning the OAG's conduct of litigation of OEPA's environmental enforcement cases and permit appeals on behalf of the Agency. The MOU remains effective, though both OEPA and OAG representatives report that the dispute resolution provisions of the MOU are rarely, if ever, invoked because of the longstanding good working relationships between the offices,.

7. What are the various options for enforcement cases (e.g., notice of violation, compliance orders, administrative penalty orders, administrative injunction claims, judicial penalty claims, judicial injunctive claims, or other actions)? Does this differ between programs?

ANSWER: The following are the enforcement choices of OEPA:

- *a. No Action;*
- *b. Notice of Violation (NOV) - generated early in the process by a District Office (DO) or local authority (This is the formal identification of violations to the facility);*
- *c. Warning Letter - These can be issued by an OEPA division director, or the director of a DO or local authority;*
- *d. Director's Findings & Orders (F&O) - (These are administrative actions);*
  - *i. Unilateral Order - No penalty, only seeks compliance;*
  - *ii. Consent Order - Seeks both penalties and compliance;*
- *e. Referral to the OAG; and*
- *f. Referral to U.S. EPA.*

OEPA issues NOVs, warning letters, F&Os, and settled orders. OEPA also refers a number of cases to the Ohio Attorney General's office for administrative, civil, and criminal enforcement actions. The OAG's Office also handles a number of contested permit appeals. See the appended Dockets of cases and matters, in particular the July 10, 2000 Letter with attachments (Attachment LEO-01), the June 21, 2000 Letter with attachments (Attachment LEO-02), and the Criminal Enforcement Docket (Attachment LEO-05).

8. What factors determine whether a case will be pursued judicially or administratively?

ANSWER: There are a variety of factors, which are applied on a case-by-case basis, including inter alia the need: 1) to stop actual or potential harm to the health of people or the environment, 2) to compel clean up of past pollution or enjoin present pollution that is in violation of the law, 3) to prevent and deter future violations, and 4) to recover penalties based on the seriousness of the violation, the type of violation (e.g., a repeat violation or a violation of a court or administrative order), the degree of recalcitrance of the violator, the economic benefit the violator has gained as a result of the violations, and other statutory or policy factors. For example, the Agency generally refers cases where it seeks both a penalty and injunctive relief (OEPA cannot unilaterally impose a penalty, though it can obtain one through settlement). The MOU between OEPA and the OAG's office helps set the standard when a case is referred.

9. Describe how enforcement cases are prepared for referral to the Ohio Attorney General's Office.

ANSWER: OEPA program offices prepare the referrals to the OAG in the first instance. The program offices are responsible for discovering, compiling and analyzing the evidence of violations of Ohio's environmental laws. An enforcement committee reviews the referrals.

10. Describe the attorneys' role in the preparation of the referrals.

ANSWER: OEPA attorneys' role in preparing referrals varies somewhat from program to program, but generally involves writing or helping to write a portion of the cover memorandum (typically a 5-10 page document, but longer in more complex cases) and conducting a legal review of the evidence and violations cited in the referral. A representative of the legal office participates on the enforcement committee to decide whether or not to refer.

11. Do OEPA attorneys stay involved after a case has been referred? If so, what is their role?

ANSWER: After referral of an enforcement case to the Ohio Attorney General's Office, the OAG attorney assumes lead responsibility for settling, filing and litigating the enforcement case. The role of OEPA attorney is generally limited, but this may vary on a case-by-case and program-by-program basis.

12. Describe how administrative enforcement cases are handled within OEPA.

ANSWER: OEPA programs have the lead in the preparing and resolving administrative enforcement cases and matters. OEPA attorneys advise their program clients during the various phases of administrative enforcement, including, when requested, legal advice on warning letters, NOVs, settlement orders and unilateral F&Os. See the Answer to Item No. 4, above.

13. Describe the attorneys' role in the preparation and resolution of administrative cases and matters.

ANSWER: The exact role of an attorney in those cases and matters varies program-by-program and case-by-case. See Answers to Item Nos 4 and 12, above.

14. What informal or formal processes do OEPA attorneys use to review and check the facts for enforcement cases?

ANSWER: OEPA attorneys review the evidence in each referral to the OAG's Office for legal sufficiency and, when requested, provide legal advice in a number of administrative cases, at varying times during the development of a case.

15. What sort of docketing system does OEPA utilize for enforcement cases?

ANSWER: OEPA programs each maintain a docket of their respective enforcement cases and matters. See the appended dockets, Attachments LEO-01, LEO-02, and LEO-05, referenced in the Answer to Item No. 7 supra. The OEPA legal office does not independently maintain a docket of enforcement cases.

16. How is the success of the OEPA legal office measured?

ANSWER: The success of the OEPA legal office is measured principally by the quality and timeliness of the legal advice it provides to the Director and the program offices.

17. What precisely are the measures of that success?

    a. number of inspections?
    b. number of information gathering requests?
    c. in terms of enforcement outputs?
    d. in terms of enforcement outcomes?
    e. in terms of legal advice given?
    f. in terms of other quantitative or qualitative measures?
    g. please provide (by calendar or fiscal year, however you routinely compile it), for

each year from 1995 through 1999, the data reflecting the:

i. number of notices of violation;
ii. number of Director's Findings and Orders;
iii. number of other administrative orders;
iv. number of referrals of enforcement cases to the Ohio Attorney General;
v. number of cases concluded at the first level (e.g. hearing officer, administrative law judge, trial court), through:

A. Consent Agreements or Decrees;
B. Stipulations;
C. Orders;
D. Dismissals or Withdrawals;

vi. number of closed cases;
vii. the environmental value of concluded enforcement cases in terms of the dollar value of injunctive relief and/or the dollar value of supplemental environmental projects agreed to as a condition of settlement of an enforcement case or matter; and
viii. the environmental value of concluded enforcement cases in terms of the amount and type of pollution reduced, pollution prevented, environmental restoration, enhanced worker protection, environmental information revealed, enhanced monitoring, environmental audits completed, environmental management systems implemented, or reports received by OEPA or a local environmental agency.

ANSWER: With the exception of Item 17.e. above, the factors listed relate to the success of the individual program offices rather than the legal office. OEPA, however, has provided a number of attached dockets, which, to the extent that the requested information is in fact compiled by OEPA, are responsive to each of the sub-items listed. OEPA does not compile data on Item Nos. 17.g.vii. and 17.g.viii. above.

18. For each of years 1995, 1996, 1997, 1998, and 1999, please provide information regarding the tracking of penalties proposed, assessed, and collected, including a breakdown by the economic benefit and gravity portions of the penalties.

ANSWER: See the appended dockets, particularly Attachment Nos. LEO-01, LEO-02, LEO-04, and LEO-05.

19. How does OEPA measure the productivity of its attorneys involved in enforcement?

ANSWER: OEPA does not formally measure this.

20. How does OEPA measure the productivity of its legal enforcement program?

ANSWER: OEPA does not formally measure this.

21. How does OEPA measure the efficiency of its attorneys engaged in enforcement?

ANSWER: OEPA does not formally measure this.

22. How does OEPA measure the efficiency of its legal enforcement program?

ANSWER: OEPA does not formally measure this.

23. Please expand on your answers to each of questions 19 through 22 above to explain the measures of success under each category and provide the results of those measures for each of calendar years 1995, 1996, 1997, 1998, and 1999. We are not interested in the specific performance ratings of attorney staff or other employment-related issues, which would be confidential and inappropriate for this review. We are looking to review legal program data. Examples of attorney productivity measures would be a comparison of initiated cases per year per enforcement attorney FTE (full time equivalent), ongoing cases per year per FTE, or concluded cases per year per FTE. Examples of attorney program efficiency measures would be the same productivity data taken over the five year period from 1995 through 1999. If you possess or compile additional data or evaluations, whether quantitative or qualitative, on the issues of measuring the success of your legal enforcement program, we would be interested in reviewing and discussing it with you.

ANSWER: OEPA does not measure the success of its legal program in the any of the manners suggested by Item No. 23.

24. Describe the criteria for and role of OEPA attorneys in the targeting of enforcement actions.

ANSWER: Targeting of enforcement actions is the responsibility of the OEPA program offices. Nevertheless, OEPA attorney supervisors do participate in the regular enforcement committee meetings that discuss targeting of enforcement actions. These meetings are conducted on a program-by-program basis. Staff attorneys participate in those meetings on a case-by-case basis.

25. Describe the criteria for and role of OEPA attorneys in the screening of enforcement

cases and matters.

ANSWER: As mentioned above, OEPA attorney supervisors participate in the regularly held meetings of the enforcement committees. One of the principal functions of those meetings is the screening of enforcement cases. Staff attorneys also participate in those meetings when an assigned case is discussed at the meeting. See the Answer to Item No. 5 above.

26. How does OEPA decide which of the following enforcement avenues available is taken for any given case, or whether a case should be brought at all?

    a. What role do OEPA attorneys have in this decision?
    b. Describe the process for each one, including, but not limited to, the use of pre-filing letters, and administrative or judicial filings; timing of any actions; and internal processes.
    c. Please list the policies and guidelines, both formal and informal, which guide this decision.
    d. Briefly describe each policy and guideline, and provide copies of them.
    e. What roll does litigation risk for a given enforcement action have in determining the enforcement action to be taken?
    f. What role does the ability of the regulated entity to pay a penalty or for required pollution control equipment or measures play in determining the enforcement action to be taken?
    g. Are facilities in significant noncompliance (SNCs) treated differently than other facilities in the context of enforcement? If so, explain how violations by SNCs are identified, and processed?

ANSWER: Decisions on which of the available enforcement options should be pursued in an individual case are made by the programs, on a program-by-program and case-by-case basis. The programs also request legal input on a case-by-case basis. In some programs, OEPA attorneys play a greater role in enforcement cases than in others.

27. Describe how the legal office tracks the progress of enforcement cases handled by its attorneys and how the office addresses and tracks violators of OEPA administrative orders and judicial orders, stipulations and consent decrees.

ANSWER: See the Answer to Item No. 15 above.

28. List all outstanding enforcement actions taken over the past five years in OEPA's RCRA, CAA and CWA NPDES programs. Please include in this list all outstanding cases referred to the Ohio Attorney General's Office, whether filed or not. Please specify:

a. the name of the alleged violator;
b. permit number, if applicable;
c. type of action;
d. summary of the violations;
e. the date the case was initiated;
f. the date of referral to Ohio Attorney General, if applicable (include all current referrals);
g. the date the action was filed;
h. if resolved, date of resolution;
i. if a penalty was sought, state the amount of penalty initially sought, the amount assessed, the amount finally obtained, and the portion of the penalty attributable to the economic benefit allegedly gained by the violator as a result of the violation(s);
j. the date all provisions in the document resolving the case were finally complied with; and
k. the date the case was closed.

ANSWER: See the July 10, 2000 letter from Frank J. Reed, Jr., to Bertram C. Frey (the July 10, 2000 Letter or Attachment LEO-01) and the June 21, 2000 letter from Joseph P. Koncelik to Bertram C. Frey (the June 21, 2000 Letter or Attachment LEO-02).

29. Provide a breakdown of the overall numbers and percentage breakdown by type of enforcement cases described for each year since 1995 to the present. Please give a similar analysis for SNC facilities. For any significant changes in the overall enforcement numbers or the percentage breakdown by type of enforcement cases for any given year from the previous year, please describe the reason for the differences.

ANSWER: See the July 10, 2000 Letter and the June 21, 2000 Letter, Attachments LEO-01 and LEO-02, respectively.

30. For those entities in significant noncompliance during the past five years for which no enforcement action has been taken, please set forth the rationale for non-action in each case.

ANSWER: This is a matter to be addressed to each program and varies on a program-by-program basis.

31. Please describe the role of OEPA attorneys in setting priorities for inspection and surveillance of sources, sites or facilities to determine compliance with applicable program requirements. Please explain the procedures and/or follow-up undertaken by the State, including time frames, as a result of deficiencies noted during such evaluations, as

well as the role of OEPA attorneys in such procedures.

ANSWER: OEPA attorneys have no role is these decisions.

32. When a respondent or defendant makes an inability to pay claim, what sort of information does OEPA seek from that party in order to validate that claim? How does OEPA perform the ability to pay analysis? Please provide any relevant policy or guidance.

ANSWER: The role of OEPA legal staff is to defend the OEPA program experts who give expert advice and testimony on ability to pay issues.

33. In regard to citizen participation:

    a. Please provide citations to all local and state laws and regulations which pertain to citizen participation in both the enforcement and permitting processes at OEPA.
    b. Does the OEPA i. air /ii. waste /iii. water program regularly involve citizens at any point during the enforcement process? If so, please explain.
    c. Please briefly describe citizen involvement in i. air/ii. waste/iii. water permitting decisions? For which permitting processes are citizens involved, what is the nature of that involvement, and what resources are made available by OEPA to the citizens to guide them, help them, or educate them in that involvement?
    d. Does OEPA have general policy or guidance which shapes the nature of citizen involvement in OEPA enforcement and permitting decisions? Please provide copies of them.
    e. How is consistency in regard to practices pertaining to citizen involvement assured amongst the district offices and local offices? What does the central office do when it finds that a local or district office is somehow limiting citizen involvement as required by policy, guidance or law?
    f. Describe how OEPA tracks citizen complaints.
    g. Please set forth and/or provide any policies on following up on citizen complaints, and describe follow-up on citizen complaints. and
    h. Please set forth the avenues and procedures available for citizens to raise concerns about a case or facility.

ANSWER: Item No. 33a.: These citations have been produced by the Ohio Attorney General's Office in response to specific, program-by-program requests. Item Nos. 33b through 33h: The answers to this questions vary, depending on the program, and are addressed in each of the program specific responses below. In all cases, the OEPA program offices have lead on these issues. The program offices seek OEPA legal advice and input on a matter-by-matter or case-

by-case basis.

34. Please identify pertinent State laws, regulations and policies that do present or could present an obstacle to enforcement of Ohio's authorized, delegated or approved environmental programs.

ANSWER: The Ohio Attorney General's Office is the legal office that is duly authorized to respond to this question.

II. RESOURCE CONSERVATION AND RECOVERY ACT (RCRA) SUBTITLE C PROGRAM

[During the U.S. EPA interviews of OEPA OLS personnel, Ed Tormey answered questions about the Hazardous Waste section and Mark Navarre answered questions about the VAP program.]

35. In the context of RCRA Subtitle C, what functions do the attorneys in your office perform?

ANSWER: See Answer 1 above. The attorneys in the office provide legal assistance. They also defend permit appeals and appeals of final agency actions. About half their work is spent defending permit appeals.

36. Provide copies of OEPA guidance related to the interpretation, implementation and enforcement of the RCRA Subtitle C program.

ANSWER: Guidance is developed program by program. There is no general enforcement guidance. They follow the EPA's firm but fair enforcement guidance.

37. Provide copies of any OEPA guidance related to or governing citizen participation in RCRA subtitle C cases and access to State documents related to Subtitle C facilities. (This request is not limited to RCRA guidance and should include guidance related to citizen complaints.)

ANSWER: Guidance is developed by the programs. Many guidance documents are on the OEPA's web-site. The legal office is not the keeper of the guidance documents. OEPA representatives did not identify any guidance on this issue.

38. Describe OEPA policy related to or governing citizen participation in RCRA Subtitle C cases and access to State documents related to Subtitle C facilities. (This request is not limited to RCRA policy and should include policies related to citizen complaints.)

ANSWER: See Answer to Item No. 37 above.

39. Please identify and describe any State laws, regulations and/or policies that your office is aware of that present hurdles in the implementation or enforcement of the RCRA Subtitle C Program?

ANSWER: The State was aware of none.

40. Are there any limitations on the State's authority that you are aware of that would prevent the State from issuing a permit to a facility that would be required to have a permit under the federal RCRA program?

ANSWER: OEPA mentioned the question of corrective action for a federal BIF Permit.

41. What is the role of OEPA's legal staff in the tracking of the permit status of Ohio RCRA facilities?

ANSWER: This is not a role of the Legal Office.

42. What is the role of OEPA's legal staff in responding to requests for information in State files regarding RCRA facilities?

ANSWER: Involvement in FOIAs is limited.

43. What is the role of OEPA's legal staff in interpreting State RCRA Subtitle C authorities and regulations?

ANSWER: Sometimes the legal staff is asked to provide answers to specific questions. These are enforcement sensitive. Regarding some legal issues, OEPA has requested a formal opinion from the Attorney General.

44. How has OEPA's legal staff interpreted the definition of a significant violator in the context of Ohio's authorized RCRA Subtitle C program? Please provide the definition of a significant violator under the authorized RCRA program.

ANSWER: OEPA follows the federal guidelines.

45. How has OEPA's legal staff interpreted the bases for withholding documents under Ohio's public records law with respect to RCRA information in State files?

ANSWER: The records law is broad with respect to any information. RCRA information is not

treated differently. The Attorney General's Office has discussed the public records law in the Audit Law context and rendered an opinion. A copy of the opinion is attached.

46. Please provide and describe any and all guidance and policy regarding the implementation of the VAP, including guidance and policy related to the application of the VAP to any RCRA Subtitle C facilities.

ANSWER: OEPA referred U.S. EPA representatives to the VAP website, which contains the VAP guidance. It can be found at www.epa.state.oh.us/derr/derrmain.html.

47. Are any facilities regulated under RCRA Subtitle C, including but not limited to generators, allowed to participate in the VAP? If so, how does OEPA interpret the application section of the VAP to allow RCRA-regulated facilities to participate in the VAP?

ANSWER: OEPA provided a copy of the VAP regulations. Under these regulations, certain types of RCRA facilities can participate. The following facilities cannot participate in the VAP: facilities subject to closure, including large quantity generators; permitted facilities; facilities under an order; facilities subject to enforcement. The regulations, however, allow the following facilities to participate: small quantity generators, facilities who stored over 90 days but were not subject to closure, facilities that while not subject to closure are required to obtain a permit or conduct corrective action and do not yet have a permit, and non RCRA units at RCRA C facilities.

48. What is the role of OEPA attorneys in identifying facilities as handling hazardous waste? How may times over the past several years have OEPA attorneys been consulted by OEPA RCRA program staff on this issue?

ANSWER: This is not a legal office role. The OEPA legal office does not track this information.

49. Please provide OEPA's interpretation of the State definition of the terms "hazardous waste" and "solid waste" under RCRA. For example, we are interested in instances where OEPA attorneys have provided advice to the regulated community or an individual facility in an applicability decision.

ANSWER: OEPA referred U.S. EPA to the Ohio statute and the implementing regulations. The State uses different terminology to describe a solid waste subject to Subtitle D and a solid waste that can become a hazardous waste under RCRA Subtitle C.

50. Does OEPA legal staff believe that OEPA can access information that is required to be collected, developed, maintained or otherwise made available under RCRA from a

RCRA Subtitle C facility participating in the VAP? If not, why not?

ANSWER: Yes. OEPA did not believe there is an impact on its ability to get information from a facility participating in the VAP.

51. Does OEPA legal staff believe that OEPA can access information regarding a potential imminent and substantial endangerment from a RCRA Subtitle C facility participating in the VAP? If not, why not?

ANSWER: See Answer to Item No. 50 above.

52. For each RCRA Subtitle C facility participating in Ohio's VAP, identify and describe any instances where OEPA has sought information that is required to be collected, developed, maintained or otherwise made available or that might be needed to abate a potential imminent and substantial danger.

ANSWER: OEPA did not answer directly this question. In the June 21, 2000 Letter's Attachments XII and XIII (see Attachment LEO-02), OEPA discussed each RCRA facility participating in the VAP, but did not describe any instances contemplated by Item No. 52.

53. Under the Ohio VAP, what information has the State obtained to ascertain whether a cleanup addresses or has addressed a release of a hazardous substance to the environment?

ANSWER: The OEPA representatives pointed to the regulations. It is their position that they can obtain any information.

54. Identify any instances where OEPA has determined that it could not obtain information from a RCRA Subtitle C facility because of the VAP.

ANSWER: None.

55. Identify and describe any instances where OEPA has determined that a RCRA-regulated facility participating in Ohio's VAP could avoid a requirement of RCRA.

ANSWER: OEPA did not answer directly this question. In the June 21, 2000 Letter's Attachments XII and XIII (see Attachment LEO-02), OEPA discussed each RCRA facility participating in the VAP, but did not describe any instances contemplated by Item No. 55.

56. How has OEPA interpreted the public participation process for cleanups under the VAP? Please provide any interpretations, if any.

ANSWER: OEPA has not issued such an interpretation.

57. How has OEPA interpreted, under the VAP, the effect of

    a. an invitation;
    b. a no further action letter; and
    c. a covenant not to sue?

ANSWER: Item Nos. 57.a. and 57.b.: the invitation and the no further action (NFA) letter have no effect. Invitees must meet eligibility criteria, and a NFA is just an application. Item No. 57.c.: A covenant not to sue (covenant) is limited by its language. OEPA furnished U.S. EPA representatives with a copy of the covenant issued to the Steelcraft facility (Attachment LEO-03). This covenant provided a release from civil liability from the state regarding performing additional investigative or remedial activities at the property identified in the property assessment. The covenant, however, did not extend to property for which investigational or remedial activities were not conducted in compliance with OAC 3746 or 3745-300 or as otherwise specifically provided in OAC 3746, and does not limit the Director's authority to act when he determines that a release or threatened release poses an imminent and substantial threat to public health or safety or the environment. In addition, the covenant can be revoked under certain circumstances. See also Attachments XII and XIII to the June 21, 2000 Letter, LEO-02.

58. Identify and describe any instances where the State enforced RCRA requirements or sought penalties against a facility participating in the VAP.

ANSWER: OEPA could not answer directly this question. In Attachment XII and XIII to the June 21, 2000 Letter, LEO-02, however, OEPA discussed each RCRA facility participating in the VAP. OEPA did not describe any such instances.

59. Identify and describe any instances where the State required corrective action under RCRA from a facility participating in the VAP.

ANSWER: OEPA could not answer directly this question. In Attachment XII and XIII to the June 21, 2000 Letter (LEO-02), however, OEPA discussed each RCRA facility participating in the VAP. OEPA did not describe any such instances.

60. How has OEPA interpreted the definition of the term "reclaimed" for the purposes of recycling (see 40 C.F.R. § 261.2(e)) in particular cases?

ANSWER: OEPA did not answer this question. OEPA did not believe it had made a final determination on this issue. OEPA also considered this issue to be outside the scope of the

petition.

61. How has OEPA interpreted the definition of the point where waste exits the unit in which it is generated? Please provide examples from specific cases or matters.

ANSWER: OEPA did not answer this question. OEPA did not believe it had made a final determination on this issue. OEPA also considered this issue to be outside the scope of the petition.

62. Region 5 would like to discuss the following RCRA facilities:

a. AK Steel, Middletown, OH (mentioned in petition);
b. Georgia - Pacific, Columbus, OH (mentioned in petition);
c. Envirosafe, Oregon, OH (mentioned in petition);
d. Brush Wellman, Elmore, OH;
e. PPG Industries, Circleville, OH (mentioned in petition);
f. Worthington Custom Plastics, Inc. in Mason, Ohio (mentioned in petition);
g. WCI Steel, Warren, OH (variance/exclusion);
h. Agmet Metals, Inc., Oakwood Village, OH (variance/exclusion);
i. Par West Property (Container Compliance Corp.), Cleveland, OH (OHD060431947) (RCRA facility in VAP);
j. LTV Steel, Cleveland, OH (OHD004218673) (RCRA facility in VAP);
k. Steelcraft Manufacturing (RCRA facility in VAP);
l. Copeland Corp., West Union, OH (OHD053069001) (RCRA facility in VAP); and
m. Mosler, Hamilton, OH (OHD001502632) (RCRA facility in VAP).

ANSWER: OEPA provided a copy of the Steelcraft covenant at the April 18, 2000 meeting (see Attachment LEO-03). At an April 19, 2000 meeting, the Attorney General's Office provided copies of the settlements reached with Worthington Custom Plastic, Wheeling Pittsburgh Steel, Brush Wellman Inc., LTV Steel Company, Inc., and Envirosafe. The June 21, 2000 Letter (LEO-02) included a summary of OEPA actions pertaining to facilities mentioned in the petition, including AK Steel, Georgia Pacific, Envirosafe, Brush Wellman, PPG Industries, Worthington Custom Plastics, Inc. and WCI Steel (see Attachment VIII to the June 21, 2000 Letter, LEO-02); and a discussion of each RCRA facility participating in the VAP, including Par West Property, LTV Steel, Steelcraft, Copeland Corp. and Mosler (See Attachment XIII to the June 21, 2000 Letter, LEO-02).

63. When volunteers submit "no further action" letters to OEPA for the purpose of entering the VAP, is the volunteer's history examined (by VAP or legal staff) to determine if <u>any</u> of the exclusions listed in Ohio's VAP regulations apply?

ANSWER: The VAP group has a checklist for reviewing facilities.

64. Does the staff in the Voluntary Action Program verify the volunteer's history with the program offices? For example, does the VAP staff consult with permitting staff to make sure that the facility isn't subject to closure under a permit before a covenant is issued?

ANSWER: See Answer to Item No. 63 above.

III. RESOURCE CONSERVATION AND RECOVERY ACT (RCRA) SUBTITLE D PROGRAM

65. Does the State have the authority to impose the following remedies for violation of State program requirements:

    a. to restrain immediately and effectively any person by administrative or court order or by suit in a court of competent jurisdiction from engaging in any activity which may endanger or cause damage to human health or the environment;
    b. to sue in a court of competent jurisdiction to enjoin any threatened or continuing activity which violates any statute, regulation order, or permit which is part of or issued pursuant to the state program; or,
    c. to sue in a court of competent jurisdiction to recover civil penalties for violations of a statute or regulation which is part of the state program or of an order or permit which is issued pursuant to the state program?

ANSWER: The State's authority is essentially unchanged since EPA's approval of the program.

66. What are these authorities? State all authorities for Item Nos. 65.a., 65.b., and 65.c., above.

ANSWER: Section 3734.13 of the Ohio Revised Code is the state's primary administrative order authority. Maximum penalty amounts authorized under the statute remain unchanged. Consensual agreements with respondents typically refer to Section 3745.01, which allows the state to further the purposes and goals of Section 3745 generally. OEPA refers civil matters to the Ohio Attorney General under the authority of Section 3734.10 of the Ohio Revised Code. Section 3734.99 of the Ohio Revised Code is the primary criminal enforcement provision.

67. Does the State allow for intervention in the state civil enforcement process by providing either:

    a. authority that allows intervention, as of right, in any civil action to obtain

remedies specified in Item No. 65, above, by any citizen having an interest that is or may be adversely affected; or

b. assurance by the appropriate state agency that:

i. it will provide notice and opportunity for public involvement in all proposed settlements of civil enforcement actions (except where immediate action is necessary to adequately protect human health and the environment); and

ii. it will investigate and provide responses to citizen complaints about violations; and

iii. it will not oppose citizen intervention when permissive intervention is allowed by statute, rule or regulation?

ANSWER: Under ORC Section 3734.101, citizens may bring civil actions against violators or the state. Subsection 3734.101(c)(2) pertains to RCRA Subtitle D. The OEPA program office may track complaints for which they have received notice. The OEPA legal office does not track these actions. The OEPA program does track verified complaints under ORC 3745.08. Joe Koncelik receives copies of and assigns an attorney to all verified complaints. OEPA provided a copy of its verified complaint log in Attachment 1 to the June 21, 2000 Letter, LEO-02.

68. If Item No. 67.a. above applies, state all such authorities. Does OEPA track all instances of citizen intervention?

ANSWER: See Answer to Item No. 67 above.

69. If Item No.67.b. above applies, state all such assurances. Provide evidence that OEPA has in fact acted in accordance with these assurances.

ANSWER: See Answer to Item No. 67 above.

70. Please provide guidance and policies on enforcement against municipal solid waste landfills.

ANSWER: OEPA did not provide copies guidance or policies on this subject. No new enforcement guidance has been written since approval of the Subtitle D program in 1994.

71. How does OEPA identify violators ?

ANSWER: The OEPA program identifies violators in the Columbus office and at the district level. County health departments also identify violations.

72. Please provide information regarding how OEPA tracks violators.

ANSWER: The program office does the tracking.

73. Please list all enforcement actions OEPA has taken against Subtitle D violators in the past five years.

ANSWER: In the June 21, 2000 Letter (LEO-02), OEPA provided tracking information on administrative cases, including the amount of penalties obtained in resolutions, and a description of OEPA actions at cases mentioned in the petition. The Attorney General's office provided a docket of civil cases.

74. Under what authorities, identified in Item No. 66, above, did OEPA take these actions?

ANSWER: The tracking log OEPA uses contains some of this information.

75. What was the length of time between identification of the violation and initiation of the enforcement action?

ANSWER: The tracking log OEPA uses does not contain this information.

76. What was the length of time between identification of the violation and obtaining compliance?

ANSWER: The tracking log OEPA uses does not contain this information.

77. What were the amounts of penalties initially assessed?

ANSWER: The tracking log OEPA uses does not contain this information.

78. What were the amounts obtained?

ANSWER: The tracking log OEPA uses contains this information. The June 21, 2000 Letter (LEO-02) identified penalties obtained in resolutions of administrative cases. The docket the Attorney General's Office submitted identified penalties obtained in civil cases.

79. Did the penalties obtained in all instances include at least the economic benefit of non-compliance?

ANSWER: The tracking log OEPA uses does not contain this information.

80. Did any of these actions include enforcement actions against landfills releasing chemical contaminants into the environment? Identify all such actions.

ANSWER: The tracking log does not provide this level of detail. The Division of Solid and Infectious Waste Management summarized the orders obtained in case resolutions in Attachment IV to the June 21, 2000 Letter (LEO-02), however. OEPA did not provide any additional information on this.

81. Did any of these actions include enforcing the SIP's nuisance provision at landfills? Identify all such actions.

ANSWER: The tracking log does not provide this level of detail. The Division of Solid and Infectious Waste Management (DSIWM) did summarize the orders obtained in case resolutions in Attachment IV to the June 21, 2000 Letter (LEO-02), however. OEPA did not provide any additional information on this.

82. What injunctive relief did OEPA obtain in these enforcement actions?

ANSWER: OEPA summarized the orders obtained in DSIWM case resolutions in Attachment IV to the June 21, 2000 Letter, LEO-02.

83. How does OEPA track the permit status of Ohio RCRA Subtitle D facilities?

ANSWER: The OEPA program has this information. The OEPA legal staff has no role in this tracking.

84. At what level has OEPA's solid waste program been funded for the last five years?

ANSWER: OEPA provided this information in Attachment VIII to the June 21, 2000 Letter, LEO-02. According the chart in that attachment, DSIWM was funded at the following levels in the following years: $8,617,196.39 in 1996; $9,370,155 in 1997; $11,927,186 in 1998; and $10,435,796 in 1999. $11,125,920.55 was projected for the year 2000.

85. Do the owners or operators of any RCRA Subtitle D facilities participate in Ohio's Voluntary Action Program (VAP)?

ANSWER: No. Operating, permitted MSWLFs are not eligible for participation in the VAP.

86. If the answer to Item No. 85 above is yes, which ones?

ANSWER: The Answer to Item No. 85 is no.

87. To the extent not already covered above, describe the enforcement history (within the last five years) at:

    a. Rumke Landfill;
    b. Danis Tremont Solid Waste Landfill and Barrel Fill;
    c. Danis Clarko Solid Waste Landfill;
    d. Monsanto Bond Road Landfill; and
    e. ELDA Landfill (Waste Management).

ANSWER: OEPA provided full access to all the above files. In Attachment VIII to the June 21, 2000 Letter, LEO-02, OEPA also summarized its actions at these facilities.

88. Provide any other information you believe would assist U.S. EPA in determining whether or not Ohio's approved Subtitle D program is adequate.

ANSWER: OEPA may submit additional information later.

IV. AIR PROGRAM

[U.S. EPA interviewed Jeanne Mallett, chief of the air legal program at OEPA, at OEPA's Central Office in Columbus, Ohio. The questions are in regular text, and Jeanne's answers are in Italics. To the degree that Jeanne couldn't answer a questions, the answer portion so states and references who would know the answer to the question.]

89. At what procedural point during the development of an air enforcement case is an attorney assigned to a matter?

ANSWER: The answer to this question is the same for both the District Offices (DO) and the local authorities. A matter is first referred to Central Office (CO), and an attorney from the CO is assigned. Not all cases are referred, however. Inspectors at District Offices are able to issue warning letters. Cases are normally referred if the violations are contested, if there are citizen complaints, etc. The Central Office handles all TRI violations from the beginning, and a CO inspector will write up the Enforcement Action Request (EAR), and F&Os at the same time. No formal policies exist for when a DO or local authority will refer a case. Local authorities and DOs draft EARs when they want to refer a case to the CO.

90. How do legal managers supervise the work of staff attorneys in the air enforcement program?

ANSWER: The legal managers will assign a case which is referred to one of the staff attorneys. All EARs come to James Orhleman, who decides which CO attorney should be assigned. Assignments are normally done on a rotational basis, unless somebody is already assigned. That person will remain on the case. There is an electronic tracking system. Once a month, technical staff and attorneys meet to review OEPA's caseload in order to keep administrative cases moving. Also, air attorneys will meet with their OAG counterparts once a week.

91. Please describe/provide a copy of OEPA's most important overall policy on pursuing air enforcement actions. How does OEPA maintain consistency amongst the various DOs and local authorities?

ANSWER: The CO is referred cases by local authorities and by the DOs, which means that it can maintain consistency through its direct involvement in most enforcement cases. The CO is consistent in how it applies the laws throughout Ohio.
In regard to local authorities, they are only allowed to run an air program if a local code or ordinance is adopted which is consistent with the State laws and regulations. Authority to run a program is not delegated exactly, since OEPA always has supervisory authority. OEPA enters into contracts with the local authorities for the local authorities to be able to run the air program within their areas of jurisdictions. The Department of Air Pollution Control (DAPC) works with these local authorities to set inspection targeting and monitoring programs. DAPC will audit a local authority which it feels is not properly implementing its program. Two of the local authorities don't have permitting programs, so OEPA does the permitting in these areas.

92. What informal or formal processes do OEPA personnel and attorneys use to review and check the facts for air enforcement cases?

ANSWER: Attorneys mostly rely on the technical personnel for their analysis of violations. Air cases are often complicated, and difficult to figure out the law or compliance. The most common evidence used are inspections, stack tests and nuisance complaints.

93. What sort of docketing system does OEPA utilize for air enforcement cases?

ANSWER: The program office does all of the docketing. The DAPC uses the AIRS docket system.

94. How is the success of the OEPA legal office measured in regard to air enforcement cases?

ANSWER: OEPA doesn't have a method for measuring success.

95. For each of years 1995, 1996, 1997, 1998, and 1999, please provide information

regarding the tracking of penalties proposed, assessed, and collected, including a breakdown by the economic benefit and gravity portions of the penalties.

ANSWER: This question could not be answered in the scope of this interview. OEPA has independently provided this information to U.S. EPA in summary format in the June 21, 2000 Letter, LEO-02.

96. How does OEPA measure the productivity, effectiveness, and efficiency of its attorneys and personnel involved in the air enforcement program?

ANSWER: OEPA doesn't do this.

97. How does OEPA set a penalty in its air enforcement cases? What relevant policy and guidance is most important in setting a penalty amount?

ANSWER: OEPA uses U.S. EPA's 1991 CAA penalty policy to calculate penalties. Litigation risk is a judgment call. OEPA uses U.S. EPA's BEN model to calculate economic benefit from noncompliance.

98. What roll does litigation risk for a given air enforcement action have in determining the enforcement action to be taken, or the assessment of a penalty?

ANSWER: See Answer to Item No. 97 above.

99. What role does the ability of the regulated entity to pay a penalty or pay for required pollution control equipment play in determining the enforcement action to be taken or the assessment of a penalty?

ANSWER: Generally, the defendants or respondents have to show an inability to pay. OEPA asks for 5 years of tax returns, balance sheets, debts, statements of worth, etc. OEPA's financial experts then do the ability to pay analysis. OEPA doesn't normally document the reason for reducing the penalty for an inability to pay, however.

100. Are facilities in significant noncompliance (SNCs) or considered High Priority Violators (HPV) treated differently than other facilities in the context of enforcement? If so, explain how violations by SNCs are identified and processed?

ANSWER: OEPA has adopted the relevant federal policy and guidance for these sorts of violators.

101. Describe how OEPA tracks the progress of enforcement cases handled by its attorneys

and personnel in the air enforcement program, and how the office addresses and tracks violators of OEPA administrative orders and judicial orders, stipulations and consent decrees.

ANSWER: OEPA has a docket, but it is maintained by the program.

102. List all outstanding enforcement actions taken over the past five years in OEPA's air enforcement program. Please include in this list all outstanding cases referred to the Ohio Attorney General's Office, whether filed or not. Please specify:

a. the name of the alleged violator;
b. permit number, if applicable;
c. type of action;
d. summary of the violations;
e. the date the case was initiated;
f. the date of referral to Ohio Attorney General, if applicable (include all current referrals);
g. the date the action was filed;
h. if resolved, date of resolution;
i. if a penalty was sought, state the amount of penalty initially sought, the amount assessed, the amount finally obtained, and the portion of the penalty attributable to the economic benefit allegedly gained by the violator as a result of the violation(s); and
j. the date all provisions in the document resolving the case were finally complied with.

ANSWER: This question could not be answered in the scope of this interview. OEPA has independently provided this information to U.S. EPA in summary format in the June 21, 2000 Letter, LEO-02.

103. Provide a breakdown of the overall numbers and percentage breakdown by type of enforcement cases described for each year since 1995 to the present for the air enforcement program. Please give a similar analysis for SNC facilities. For any significant changes in the overall enforcement numbers or the percentage breakdown by type of enforcement cases for any given year from the previous year, please describe the reason for the differences.

ANSWER: This question could not be answered in the scope of this interview. OEPA has independently provided this information to U.S. EPA in summary format in the June 21, 2000 Letter, LEO-02.

104. When a respondent or defendant makes an inability to pay claim in the context of an air enforcement case, what sort of information does OEPA seek from that party in order to validate that claim? How does OEPA perform the ability to pay analysis? Please provide any relevant policy or guidance.

ANSWER: See Answer to Item No. 99 above.

105. In regard to citizen participation, could you please generally describe the citizen participation provisions that apply to OEPA's actions?

ANSWER: OEPA has a verified complaint process. Complaints to OEPA (as opposed to local air authorities) are dealt with through this process. The verified complaint provisions are found at OAC 3745.08 and apply generally to all OEPA programs. There are various steps in this process:

1) *Citizen makes a notarized complaint;*
2) *After receiving it, the Director of OEPA sends the complaint to the appropriate EC (Enforcement Committee);*
3) *The EC has the DO or local authority do an investigation, which may include contacting the citizen, or inspecting the facility;*
4) *If there is enough information, OEPA will commence an enforcement action;*
5) *OEPA often sets up a chance for a complainant to meet with a violator, especially if the matter is being dealt with through a Findings and Order; and*
6) *If OEPA finds that there is no truth to the complaint, then OEPA sends the complainant a dismissal letter.*

Citizens can appeal the dismissal of verified complaints to ERAC. Unless a complaint has absolutely no merit, OEPA almost always follows up on verified complaints.

106. Please provide citations to all local and state laws and regulations which pertain to citizen participation in both the air enforcement and permitting processes at OEPA.

ANSWER: This question could not be answered in the scope of this interview. OEPA has independently provided this information to U.S. EPA in summary format.

107. Does the OEPA air program regularly involve citizens at any point during the enforcement process? If so, please explain.

ANSWER: Citizens are involved through the verified complaint process, and by allowing people to come and copy public records (such as settlement documents). OEPA does not generally solicit Supplemental Environmental Project (SEP) ideas from citizens. Industry normally

proposes SEPs directly to OEPA, without citizen input.

108. Please briefly describe citizen involvement in air permitting decisions. For which permitting processes are citizens involved, what is the nature of that involvement, and what resources are made available by OEPA to the citizens to guide them, help them, or educate them in that involvement?

ANSWER: Comment periods for permits are laid out by the pertinent regulations.

109. Does OEPA have general policy or guidance that shapes the nature of citizen involvement in OEPA enforcement and permitting decisions? Please provide copies of them.

ANSWER: See Answer to Item No. 108 above.

110. How is consistency in regard to practices pertaining to citizen involvement assured amongst the district offices and local offices? What does the central office (CO) do when it finds that a local or district office (DO) is somehow limiting citizen involvement as required by policy, guidance or law?

ANSWER: Occasionally, one of the DOs or local authorities won't follow through on investigations properly. The CO will give feedback to the DO or local authority to have them check the complaint again.

However, DOs and local authorities also have their own informal complaint processes that don't follow the verified complaint process. CO does not have much information about these.

111. Describe how OEPA tracks citizen complaints.

ANSWER: OEPA tracks all citizen complaints which are processed through the verified complaint procedure.

112. Please set forth and/or provide any policies on following up on citizen complaints, and describe follow-up on citizen complaints.

ANSWER: See Answer to Item No. 111 above.

113. Please set forth the avenues and procedures available for citizens to raise concerns about a case or facility.

ANSWER: See Answers to Item Nos. 105 and 110 above.

114. Do OEPA attorneys review air permit decisions, and if so, what is their role?

ANSWER: No, OEPA attorneys don't generally review air permit decisions.

115. Please provide a list of all HPVs or SNCs in regard to air violations currently being tracked by OEPA, as well as their status in the enforcement process and date and manner in which they were initially identified as HPVs or SNCs.

ANSWER: This list is maintained by the program in the AIRS docket.

116. In reference to information which is submitted to the OEPA air program by a regulated facility under a claim of confidentiality or trade secret, please answer the following questions:

    a. Are confidentiality or trade secret claims being substantiated? If so, when are they being substantiated? Be specific as to the time of substantiation in both the enforcement and the permitting processes. If substantiations are not occurring, why not?
    b. What are the criteria for something to be deemed confidential or a trade secret? As part of your answer, please cite the relevant State or federal laws and regulations.

ANSWER: Generally, something has to be a trade secret, as defined by Ohio's Admin. Code 1333.61, to get protection. The Chief Hearing Officer (CHO) makes all trade secret determinations. The CHO only makes this determination when a request for the document comes to OEPA. Typically, submitters of documentation making the claim of trade secret provide substantiation information at the time of the request for release of the document, although some provide it when they initially provide the documentation at issue.

117. Does OEPA get substantiation information from a facility when the facility supplies the confidential or trade secret information, or does OEPA later ask for such information once there is a request for the document? Please explain.

ANSWER: OEPA decides this on a case by case basis. A trade secret determination is a Director's final action, and is normally some sort of written finding. If a requestor is not satisfied with this, it can file a mandamus in State court.

118. For OEPA's confidential or trade secret determinations under the air program, is there a formal determination document? If so, is that document available to the public? In those documents, have all statutory and regulatory criteria for the CBI determination been addressed? Please provide some examples of determination documents.

ANSWER: See Answers to Item Nos. 116 and 117 above.

119. How often is there training for air enforcement personnel at OEPA? Who provides this training, and what is the nature of the training?

ANSWER: The OEPA air legal department will conduct training for DOs or local authorities when requested. Otherwise, the OEPA air legal department doesn't have a set training curriculum or schedule. If there are trainings, they normally focus on how to develop and build an enforcement case.

120. When a regulated air facility makes an assertion during an enforcement or regulatory investigation, what steps does OEPA take to assure the veracity of that assertion? Please explain.

ANSWER: OEPA rarely relies on affidavits, since the air legal department feels that most of the evidence comes from self-reporting requirements or test results.

121. Do OEPA attorneys review the facts of each case before the agency decides what type of air enforcement action to take? If so, please describe the process. What happens if the OEPA attorney does not agree with the reasoning of the OEPA enforcement personnel?

ANSWER: See generally the answers to Item Nos. 1-15 above.

122. Please identify and describe any State laws, adverse judicial rulings, regulations and/or policies that your office is aware of that present hurdles in the implementation or enforcement of Title V, NSR, PSD, or NSPS programs?

ANSWER: OEPA doesn't know of any.

123. EPA would like know the general status for the following facilities (EPA does not have specific questions pertaining to these facilities at this point, but may in the future):

a. Quality Castings - NEDO;
b. 1st Stop/Cantrell Oil - Hamilton DOE;
c. Worthington Customs Plating - Hamilton County DOE;
d. Nylonge - Elyria NEDO;
e. Georgia - Pacific Resin, Inc - Columbus CDO;
f. Pthalchem - Cincinnati - Hamilton County DOE;
g. Cincinnati Specialties, Inc. - Cincinnati, Hamilton County DOE;
h. Protech facility - Cleveland;
i. Celotex - Lockland - Hamilton County DOE;

j. Marion Steel - Marion, NWDO; and
k. WTI.

ANSWER: In Attachment VIII to the June 21, 2000 Letter, LEO-02, OEPA included summaries of OEPA actions at Worthington Custom Plastics, Nylonge, Georgia Pacific, Pthalchem, Cincinnati Specialties, Inc., Protech, Celotex, Marion Steel and WTI.

124. What happened after the Ohio Supreme Court Ruling in State v. National Lime where the Court issued a decision that like-kind replacement of a piece of equipment used in a manufacturing operation does not constitute the installation of a new source of air pollutants within the meaning of Ohio Admin. Code 3745-31-02(A)?

ANSWER: OEPA changed the regulations in 1996 by adding some new definitions to make the law clearer, and get rid of this loophole opened up by the courts.

V. WATER PROGRAM

125. At what procedural point during the development of a water enforcement case is an attorney assigned to a matter?

ANSWER: There is no set point or formal policy which exists to determine when a case is referred to the Ohio Attorney General's Office for prosecution. Whenever enforcement in a particular case is to occur, the OAG is involved. The OEPA attorney and program personnel, as well as a representative from the OAG, periodically meet to determine when it is appropriate to refer a case to the OAG. During the initial development of a case, a legal manager will assign a case which is referred to one of the staff attorneys. Assignments are normally done on a rotational basis, unless somebody is already assigned. That person will remain on the case. There is an electronic tracking system. Once a month, technical staff and attorneys meet to review OEPA's caseload in order to keep administrative cases moving. Also, water attorneys periodically meet with OAG personnel. See also the Answer to Item No. 4 above.

126. Please describe/provide a copy of OEPA's most important overall policy on pursuing water enforcement actions.

ANSWER: No specific policy exists.

127. What informal or formal processes do OEPA personnel and attorneys use to review and check the facts for water enforcement cases?

ANSWER: There are no specific formal or informal processes to "check facts", but water

attorneys typically rely on technical personnel for such analyses.

128. What sort of docketing system does OEPA utilize for water enforcement cases?

ANSWER: The program office does all of the docketing.

129. How is the success of the OEPA legal office measured in regard to water enforcement cases?

ANSWER: OEPA doesn't have a specific method for measuring success.

130. For each of years 1995, 1996, 1997, 1998, and 1999, please provide information regarding the tracking of penalties proposed, assessed, and collected, including a breakdown by the economic benefit and gravity portions of the penalties.

ANSWER: In the June 21, 2000 Letter (LEO-02), OEPA provided general tracking information, not specific to the water program. With respect to the water program, that information did not specify the penalties obtained in each case. The docket the Attorney General's Office submitted listed the penalties assessed in civil cases and indicated the program that funded the action, including the water program, but did not break down the information into this level of detail.

131. How does OEPA measure the productivity, effectiveness, and efficiency of its attorneys and personnel involved in the water enforcement program?

ANSWER: OEPA doesn't do this.

132. How does OEPA set a penalty in its water enforcement cases? What relevant policy and guidance is most important in setting a penalty amount?

ANSWER: OEPA uses U.S. EPA's enforcement penalty policy to calculate penalties. Litigation risk is a judgment call. OEPA uses U.S. EPA's BEN model to calculate economic benefit from noncompliance.

133. What role does litigation risk for a given air enforcement action have in determining the enforcement action to be taken, or the assessment of a penalty?

ANSWER: See Answer to Item No. 132 above.

134. What role does the ability of the regulated entity to pay a penalty or pay for required pollution control equipment play in determining the enforcement action to be taken or the assessment of a penalty?

ANSWER: Generally, the defendants or respondents have to show an inability to pay. OEPA asks for 5 years of tax returns, balance sheets, debts, statements of worth, etc. OEPA's financial experts then do the ability to pay analysis. OEPA doesn't normally document the reason for reducing the penalty for an inability to pay, however.

135. Are facilities in significant noncompliance (SNCs) treated differently than other facilities in the context of enforcement? If so, explain how violations by SNCs are identified, and processed.

ANSWER: OEPA has adopted the relevant federal policy and guidance for these sort of violators.

136. Describe how OEPA tracks the progress of enforcement cases handled by its attorneys and personnel in the water enforcement program, and how the office addresses and tracks violators of OEPA administrative orders and judicial orders, stipulations and consent decrees.

ANSWER: OEPA has a docket, but it is maintained by the program.

137. List all outstanding enforcement actions taken over the past five years in OEPA's water enforcement program. Please include in this list all outstanding cases referred to the Ohio Attorney General's Office, whether filed or not. Please specify:

    a. the name of the alleged violator;
    b. permit number, if applicable;
    c. type of action;
    d. summary of the violations;
    e. the date the case was initiated;
    f. the date of referral to Ohio Attorney General, if applicable (include all current referrals);
    g. the date the action was filed;
    h. if resolved, date of resolution;
    i. if a penalty was sought, state the amount of penalty initially sought, the amount assessed, the amount finally obtained, and the portion of the penalty attributable to the economic benefit allegedly gained by the violator as a result of the violation(s);
    j. the date all provisions in the document resolving the case were finally complied with; and
    k. the date the case was closed.

ANSWER: In the June 21, 2000 Letter, LEO-02, OEPA provided general tracking information.

With respect to the water program, that information was not case specific. The OAG submitted the July 10 Letter, LEO-01, but it did not provide the level of detail requested by Item No. 137.

138. Provide a breakdown of the overall numbers and percentage breakdown by type of enforcement cases described for each year since 1995 to the present for the water enforcement program. Please give a similar analysis for SNC facilities. For any significant changes in the overall enforcement numbers or the percentage breakdown by type of enforcement cases for any given year from the previous year, please describe the reason for the differences.

ANSWER: OEPA provided a summary of all its administrative enforcement actions in Attachment V to the June 21, 2000 Letter, LEO-02. That summary did not address SNCs, assess differences or note percentages.

139. When a respondent or defendant makes an inability to pay claim in the context of a water enforcement case, what sort of information does OEPA seek from that party in order to validate that claim? How does OEPA perform the ability to pay analysis? Please provide any relevant policy or guidance.

ANSWER: See Answer to Item No. 134 above.

140. Do OEPA attorneys review water permit decisions, and if so, what is their role?

ANSWER: Although OEPA attorneys do not generally review water permit decisions, OEPA attorneys may assist in addressing specific legal issues, for example, backsliding or antidegradation issues, during permit development.

141. Do OEPA attorneys review the facts of each case before the agency decides what type of water enforcement action to take? If so, please describe the process. What happens if the OEPA attorney does not agree with the reasoning of the OEPA enforcement personnel?

ANSWER: See generally the Answers to Item Nos. 1-32 above.

142. Has the State enacted any statutory modifications since approval of the NPDES program in 1974 which could impact the State's ability to maintain a program as least as stringent as the federal NPDES program?

ANSWER: No.

143. Has the State promulgated any regulations since approval of the NPDES program in 1974 that could impact the State's ability to maintain a program at least as stringent as the

federal NPDES program?

ANSWER: No.

144. Are OEPA attorneys involved in any portion of the NPDES permit issuance process prior to the appeal stage (i.e. review, development, interpretation of code requirements, etc.), and if so to what extent?

ANSWER: See Answer to Item No. 140 above.

145. Has there been any evaluation of the impact of Practical Quantification Levels (PQL) on the permitting process from the perspectives of uniform and full application of PQL requirements, inconsistencies with Federal requirements, enforceability issues, or adverse Environmental Board of Review or State court decisions? If so, please provide them. If not, please provide an analysis of the positive and negative impacts of PQL on both permitting requirements and enforceability since its inception.

ANSWER: The State will provide a separate written response to this question.

146. Are all provisions of the State code creating PQL being implemented consistently throughout the State?

ANSWER: The State will provide a separate written response to this question.

147. Has an Ohio court issued an opinion since approval of Ohio's NPDES program in 1974 that could impact the State's ability to maintain a NPDES program at least as stringent as the federal NPDES program?

ANSWER: No.

148. Region 5 would like to discuss the following Clean Water Act cases:

a. Scott Fertilizer;
b. Ashta Chemicals;
c. LTV Cleveland;
d. Buckeye Egg;
e. Wheeling Pittsburgh Steel;
f. Bucyrus, Ohio; and
g. Elyria, Ohio.

ANSWER: In the June 21, 2000 Letter (LEO-02), OEPA summarized its actions at facilities

mentioned in the petition, including LTV Cleveland and Wheeling Pittsburgh Steel.

VI. CROSS-MEDIA AND MULTI-MEDIA ENFORCEMENT

149. How does OEPA manage cross-media and multi-media enforcement actions?

ANSWER: OEPA does not have any cross-media or multi-media enforcement actions and does not run a formal cross-media or multi-media enforcement program.

150. How is cross-media and multi-media targeting of enforcement cases performed and managed?

ANSWER: Enforcement cases are targeted on a single program basis, rather than a cross-program basis.

151. Is there a cross-media/multi-media case screening group that meets regularly?

ANSWER: No.

152. If yes, what is the role of that group in coordinating the preparation of cases? How does that group coordinate with single media program targeting and screening groups?

ANSWER: Not applicable, because there is no formal cross-program or multi-media program targeting and screening.

153. How are resources (people, dollars, equipment, support) assigned to cross-media and multi-media cases? How are priorities established for those activities?

ANSWER: See Answers to Item Nos. 149 through 152 above.

154. What is the role of OEPA attorneys in conducting cross-media and multi-media enforcement cases?

ANSWER: There are no cross-media or multi-media enforcement cases, but the enforcement supervisors (both legal and program) do at times discuss cases against a company that involve more than one program or multiple facilities across Ohio.

155. What is the role of the Ohio Attorney General's Office in Cross-media and Multi-media cases?

ANSWER: The program-specific OAG Office liaisons at times discuss cases against a company that involve more than one program or multiple facilities across Ohio.

156. For example, how were cross-media enforcement activities (e.g., targeting; screening; enforcement notices; administrative enforcement actions; civil judicial enforcement; criminal investigations, enforcement, and prosecutions, if applicable) coordinated for the following facilities, all of which are mentioned in the petitions:

    a. AK Steel, Middletown;
    b. Georgia-Pacific, Columbus;
    c. Tremont City Landfill, Clark County;
    d. Nylonge, Elyria;
    e. Worthington Custom Plastics, Inc., Mason;
    f. WTI, East Liverpool; and
    g. Danis/Clarkco, Springfield, Ohio.

ANSWER: In Attachment VIII to the June 21, 2000 Letter (LEO-02), OEPA summarized its actions at each of these facilities. In general, OEPA representatives report that all enforcement activities against each facility have been handled on a program-by-program basis.

August 30, 2001 Draft Report on Review of Ohio Programs
Office of the Attorney General, Environmental Enforcement Section (OAG)

PROTOCOL AND ANSWERS FOR DISCUSSIONS WITH THE OHIO ATTORNEY GENERAL'S OFFICE REGARDING OHIO ENVIRONMENTAL PROGRAMS

[On April 19, 2000, representatives of U.S. EPA's Office of Regional Counsel met with representatives of the Environmental Enforcement Section of the Ohio Attorney General's Office (OAG) and Joseph P. Koncelik, of the Ohio Environmental Protection Agency (OEPA), to review Ohio's enforcement program. Bryan Zima served as the main contact for the OAG. Discussion of the RCRA Subtitle D program between Leverett Nelson of the U.S. EPA Office of Regional Counsel and Anne Wood of the OAG occurred on June 6, 2000. U.S. EPA submitted additional questions concerning the CAA program (see Part VIII) via e-mails on May 23, 2000 (Item Nos. 84 and 85) and July 6, 2000 (Item Nos. 86 and 87). Bryan Zima, the supervisor of the air enforcement at OAG, replied to the follow-up questions via e-mails on June 30, 2000 (Answers to Item Nos. 84 and 85) and August 4, 2000 (Answers to Item Nos. 86 and 87).

[In our protocols, U.S. EPA posed the following questions. The responses of the OAG have been inserted in italics.]

I. GENERAL QUESTIONS

1. How many attorneys who work on environmental law cases and matters were employed by the Ohio Attorney General's Office in each of years 1995, 1996, 1997, 1998, 1999? Please provide the data for each year in terms of both number of persons and number of full time equivalents (FTEs) measured on December 31 of each year.

ANSWER: As of April 2000, the Ohio Attorney General's Office employed approximately 375 attorneys, 38 of whom worked in the Environmental Section. The Environmental Section is the second largest of 24 sections within the OAG, both in the number of attorneys and the overall number of employees (65). Of the 38 attorneys, 27 work on OEPA cases and matters, 7 work on Ohio Department of Natural Resources cases and matters, and 1 handles Bureau of Storage Tanks legal advice and litigation. As of April 2000, the Section had 3 attorney position vacancies. For the period from 1995 through 1999 the number of Environmental Section attorney FTEs devoted to OEPA cases and matters ranged from 24 to 27. The Section has a Chief, an Assistant Chief, and six 1st level supervisors. One supervisor is assigned to oversee cases and matters as follows: criminal cases; solid waste; hazardous waste; air; water; and the last for cases and matters arising under the emergency response and voluntary action programs (VAP). Another way to account for Environmental Section attorneys is by FTEs, as follows:

a. Criminal (includes the supervisor)	*2.5 FTEs*
b. Solid Waste (includes the supervisor)	*5.5 FTEs*
c. Hazardous Waste (includes the supervisor)*	*5.33 FTEs**
d. Air (includes the supervisor)*	*5.0 FTEs*
e. Combined Water and Emergency Response / VAP (includes both supervisors)	*9.0 FTEs*
f. Chief and Assistant Chief	*2.0 FTEs*
TOTAL	*27.33 FTEs**

**The totals reflect a slight overcount that results from the fact that the Acting Assistant Chief is also acting as supervisor for both the hazardous waste and air groups. As of April 2000, the total actual FTE was 27 with 3 vacancies.*

The Section Chief, a second level manager, is responsible for the overall legal effort of the Section as a whole. His principal duties include review of the legal work of the Section, legal and litigation strategy, management of the overall docket of cases and matters handled by the Section, client Agency relations, representation of the Office in his areas of responsibility, outreach and communications with outside constituencies (including the press), reporting to Attorney General and her staff, and other duties. The Assistant Chief assists in those duties. The supervisory attorneys are responsible for cases and matters in their particular subject matter areas and the staff attorneys handle individual cases and matters. Supervisory attorneys review the legal work of staff attorneys in their respective subject matter areas and may also handle individual cases and matters.

2. Describe the organizational structure of those attorneys.

ANSWER: See the Answer to Item No. 1 above. All Attorney General Environmental Section attorneys are housed in the Columbus, Ohio office.

3. Please provide position descriptions providing the principal duties of staff attorneys, senior attorneys, 1st level supervisors, 2nd level managers, and 3rd level executive attorneys.

ANSWER: See the Answer to Item No. 1 above.

4. At what procedural point during the development of an enforcement case is an attorney assigned to a matter?

ANSWER: The exact procedural point during the development of a case depends on the individual circumstances of the case or matter. The general rule, however, is that cases and matters are first referred from a client Ohio agency and then assigned to an attorney after

referral. Nonetheless, there are exceptions to this rule. Cases in which a temporary restraining order is sought are ordinarily examples of such an exception and are assigned as soon as possible.

5. How do attorney managers supervise the work of staff attorneys?

ANSWER: The principal method is by review and comment upon written pleadings and other legal documents and occasional case reviews. Attorneys from the Attorney General's Office also participate in regular, media-specific, enforcement targeting and screening meetings conducted by the OEPA. The committee discusses new enforcement cases as well as filed and referred cases. Among the principal functions of the enforcement targeting and screening committees is to ensure that enforcement teams use their time efficiently, that work on cases will actually lead to timely and appropriate enforcement actions and results, and that limited enforcement resources are properly allocated to important cases.

6. Please describe/provide a copy of Ohio Attorney General's overall policy on environmental enforcement actions.

ANSWER: There is no formal, written overall enforcement policy. The Attorney General of Ohio has a stated policy of fair and expeditious handling of all cases pursued by the Office.

7. What are the various options for enforcement cases (e.g., compliance orders, administrative penalty orders, administrative injunction claims, judicial penalty claims, judicial injunctive claims, or other actions)? Does this differ between programs?

ANSWER: Options include referral for judicial action seeking civil penalties and/or injunctive relief, cost recovery, contempt and criminal fines and jail time. The Attorney General's Office also represents the OEPA and the Ohio DNR in administrative penalty adjudications and in permit appeals. OEPA and Ohio DNR Director's F&Os are issued by each client agency. Generally, the enforcement options are the same for each OEPA media program.

8. Does your office represent the Ohio Environmental Protection Agency (OEPA) in both administrative and judicial environmental cases? What factors determine whether a case will be pursued judicially or administratively?

ANSWER: Yes. There are a number of factors that OEPA weighs in deciding whether to refer an enforcement case to the Attorney General, including, but not necessarily limited to, the type of violation, the need for injunctive relief, the recalcitrance of the violator, the size of the business, the size of the proposed penalty, the ability to pay of the violator, and whether the violations present an imminent and substantial endangerment to the health of persons or the environment, whether the violations have caused serious actual harm, whether the violations are repeated,

whether the violations are of an administrative or court order, and whether the violator has reaped an economic benefit resulting from the violation. The Attorney General's Office also represents OEPA in a number of administrative matters (particularly permit appeals and adjudications of proposed permit or siting actions) before the Environmental Review Appeals Commission (ERAC), the Hazardous Waste Facilities Board, and various hearing officers.

9. Describe how enforcement cases are referred to the Ohio Attorney General's Office from the OEPA.

ANSWER: Referrals to the Ohio Attorney General's Office in the first instance are prepared by the OEPA program offices. The length of the formal referral document varies depending on the nature and complexity of the case. Most of the time the case has already been discussed at an OEPA enforcement committee meeting, so OAG's management has some knowledge of the case. In a the case of a referral for the seeking of a temporary restraining order, the process is shortened considerably and the referral may be handled over the telephone.

10. Describe your office's role in the evaluation of the referrals.

ANSWER: After referral of an enforcement case to the Ohio Attorney General's Office, the OAG attorney assumes lead responsibility for review, settlement, filing, and litigation of the case. In a very rare instance, the OAG may decline a case, but usually OEPA will ask to withdraw the case before a declination letter is sent. OEPA and the OAG entered into a formal Memorandum of Understanding (MOU) in the 1970s concerning the Attorney General's conduct of litigation of OEPA's environmental enforcement cases and permit appeals on behalf of the agency. The MOU remains effective, though both OEPA and OAG representatives report that because of longstanding good working relationships between the offices, the dispute resolution provisions of the MOU are rarely, if ever, invoked.

11. Do OEPA attorneys stay involved after a case has been referred? If so, what is their role?

ANSWER: OEPA attorneys stay more involved in cases referred from OEPA Division of Emergency Response, and less so in other cases.

12. Describe how administrative enforcement cases are handled by your office.

ANSWER: The Attorney General's Office represents the OEPA in a number of administrative actions (mostly permit appeals) before the ERAC, the Hazardous Waste Facilities Board, and individual hearing officers.

13. Describe your office's role in the preparation and resolution of administrative cases and matters.

ANSWER: See Answers to Item Nos. 8 and 12 above. The administrative docket of permit appeals, requests for adjudications of proposed actions, and other formal administrative adjudications constitute roughly half of the Attorney General's docket of environmental cases and matters.

14. What informal or formal processes do Ohio Attorney General's Office attorneys use to review and check the facts for environmental enforcement cases?

ANSWER: There are a variety of reviews and checks by both the assigned Attorney General's Office attorney and management (particularly during the enforcement screening committees) performed on a case-by-case basis by the Attorney General's Office.

15. What sort of docketing system does your office utilize for environmental enforcement cases?

ANSWER: The Attorney General's Office maintains a computerized docket of all cases and matters it handles. Examples of those dockets are appended to this document.

16. How is the success of your office in the handling of environmental law cases and matters measured?

ANSWER: Success is measured by a number of measures including: the actual relief obtained; the number of cases initiated, handled and concluded; penalties assessed in a resolution of a case; and supplemental environmental projects negotiated as conditions of settlement of an enforcement case. The Office contributes each year to the Attorney General's report of its successes. The pertinent "Environmental Enforcement" Excerpts pages from the reports for year 1997, 1998, and 1999 are attached as Attachment LEO-04.

17. What precisely are the measures of that success?

    a. number of information gathering or discovery requests?
    b. in terms of enforcement outputs?
    c. in terms of enforcement outcomes?
    d. in terms of legal advice given?
    e. in terms of other quantitative or qualitative measures?
    f. please provide (by calendar or fiscal year, however you routinely compile it), for each year from 1995 through 1999, the data reflecting the:

        i. number of referrals of environmental enforcement cases received from the OEPA by the Ohio Attorney General;
        ii. number of environmental cases filed;

iii. number of cases concluded at the first level (e.g. hearing officer, administrative law judge, trial court), through:

A. Consent Agreements or Decrees;
B. Stipulations;
C. Orders;
D. Dismissals or Withdrawals;

iv. number of closed cases;

v, the environmental value of concluded enforcement cases in terms of the dollar value of injunctive relief and/or the dollar value of supplemental environmental projects agreed to as a condition of settlement of an enforcement case or matter;

vi. the environmental value of concluded enforcement cases in terms of the amount and type of pollution reduced, pollution prevented, environmental restoration, enhanced worker protection, environmental information revealed, enhanced monitoring, environmental audits completed, environmental management systems implemented, or reports received by OEPA or a local environmental agency.

ANSWER: See the July 10, 2000 Letter (LEO-01) and the Environmental Enforcement Excerpts (LEO-04).

18. For each of years 1995, 1996, 1997, 1998, and 1999, please provide information, for each environmental enforcement case concluded in that year, the amount of penalties proposed, assessed, and collected, including a breakdown by the economic benefit and gravity portions of the penalties.

ANSWER: See the July 10, 2000 Letter (LEO-01) and the Environmental Enforcement Excerpts (LEO-04).

19. For each of years 1995, 1996, 1997, 1998, and 1999, please provide your docket of referred but not filed OEPA originated enforcement cases, by OEPA program (RCRA, air and water). For each referred but not filed case, please give the number of days, as measured on December 31 of each year, that case had been on the docket of such cases.

ANSWER: See the July 10, 2000 Letter (LEO-01).

20. For each of years 1995, 1996, 1997, 1998, and 1999, please provide the number of OEPA environmental enforcement cases (broken down by program, RCRA, air and water) that were filed in each year.

ANSWER: See the July 10, 2000 Letter (LEO-01).

21. For each of years 1995, 1996, 1997, 1998, 1999, please provide, for each filed but not concluded environmental enforcement case (broken down by program, RCRA, air and water), as measured on December 31 of each year, the number of days that had elapsed since the date of filing.

ANSWER: See the July 10, 2000 Letter (LEO-01).

22. How does your office measure the productivity of its attorneys involved in enforcement?

ANSWER: The office does not formally measure the productivity or efficiency of its office as a whole or the individual attorneys within it, but the productivity and efficiency of an attorney is one of the factors that is critical to the success of the office. Consideration of several factors was mentioned by Attorney General's Office management representatives including: the ability to achieve quick and favorable settlements of cases, the ability to achieve resolution of the last 5% of the issues in a case, overall legal ability, legal research and writing skill, the ability to spot important legal issues, litigation experience, and other factors.

23. How does your office measure the productivity of its legal enforcement program?

ANSWER: See the Answer to Item No. 22 above.

24. How does your office measure the efficiency of its attorneys engaged in enforcement?

ANSWER: See the Answer to Item No. 22 above.

25. How does your office measure the efficiency of its legal enforcement program?

ANSWER: See the Answer to Item No. 22 above.

26. Please expand on your answers to each of questions 22 through 25 above to explain the measures of success under each category and provide the results of those measures for each of calendar years 1995, 1996, 1997, 1998, and 1999. We are not interested in the specific performance ratings of attorney staff or other employment-related issues, which would be confidential and inappropriate for this review. We are looking to review legal program data. Examples of attorney productivity measures would be a comparison of referred cases per year per enforcement attorney FTE (full time equivalent), filed cases per attorney per year per FTE, ongoing cases per year per FTE, or concluded cases per year per FTE. Examples of attorney program efficiency measures would be the same productivity data taken over the five year period from 1995 through 1999. If you possess

or compile additional data or evaluations, whether quantitative or qualitative, on the issues of measuring the success of your legal enforcement program, we would be interested in reviewing and discussing it with you.

ANSWER: See the Answer to Item No. 22 above.

27. Describe the role of attorneys from the Ohio Attorney General's Office in the screening of environmental enforcement cases and matters that originate from the OEPA.

ANSWER: See the Answers to Item Nos.5 and 8 above.

28. Does your office have any input into OEPA's decision concerning which of the following enforcement avenues available is taken for any given case, or whether a case should be brought at all?

    a. What role do Attorney General attorneys have in these decisions?
    b. Describe the process for each one, including, but not limited to, the use of pre-filing letters, and administrative or judicial filings; timing of any actions; and internal processes.
    c. Please list the policies and guidelines, both formal and informal, which guide this decision.
    d. Briefly describe each policy and guideline, and provide copies of them.
    e. What role does litigation risk for a given enforcement action have in determining the enforcement action to be taken?
    f. What role does the ability of the regulated entity to pay a penalty or for required pollution control equipment or measures play in determining the enforcement action to be taken?
    g. Are facilities in significant noncompliance (SNCs) treated differently than other facilities in the context of enforcement? If so, explain how violations by SNCs are identified, and processed?

ANSWER: Yes, the Attorney General has a role during discussion of cases at OEPA enforcement committee meetings. The consideration of issues raised in Item Nos 28.b. through 28.g. is on a program-by-program and case-by-case basis. There are no formal policies and guidelines that address the process of deciding the particular enforcement avenue to be taken. In almost all instances, the Attorney General's Office seeks to obtain the injunctive relief and/or bottom-line penalty established on a case-by-case basis by OEPA.

29. Describe how your office tracks the progress of environmental enforcement cases handled by its attorneys and how the office addresses and tracks violators of OEPA administrative orders and judicial orders, stipulations and consent decrees.

ANSWER: The Attorney General's Office has regular internal meetings to discuss case tracking and progress and, as mentioned above, maintains a docket of all cases and matters it handles. OAG attorneys also regularly attend OEPA enforcement targeting and screening committee meetings during which the progress of active cases is discussed. Cases involving violations of administrative orders and judicial orders, stipulations and consent decrees are given high priority.

30. List all enforcement actions referred and all actions filed by the Ohio Attorney General over the past five years in the RCRA, CAA and CWA NPDES programs. We would prefer the information on one list, which includes your entire docket of cases referred to the Ohio Attorney General's Office, whether filed or not, and the status of each case. Please specify:

    a. the name of the alleged violator;
    b. permit number, if applicable;
    c. type of action;
    d. summary of the violations;
    e. the date the case was initiated;
    f. the date of referral to Ohio Attorney General;
    g. the date the action was filed;
    h. if resolved, the date of resolution;
    i. if a penalty was sought, state the amount of penalty initially sought, the amount assessed, the amount finally obtained, and the portion of the penalty attributable to the economic benefit allegedly gained by the violator as a result of the violation(s);
    j. the date all provisions in the document resolving the case were finally complied with; and
    k. if closed, the date the case was closed.

ANSWER: See the July 10, 2000 Letter (LEO-01) and the June 21 Letter (LEO-02).

31. Does your office handle and file any enforcement actions under Ohio's federal RCRA, Clean Air Act or Clean Water Act programs that have not been referred by OEPA?

ANSWER: No, except for some criminal cases that might be referred by another agency such as U. S. EPA, the FBI, or another Ohio agency.

32. When a respondent or defendant makes an inability to pay claim, what sort of information does your office seek from that party in order to validate that claim? How does your office (or OEPA) perform the ability to pay analysis? Please provide any relevant policy or guidance.

ANSWER: The Attorney General's Office relies on OEPA experts for review of inability to pay claims.

33. In regard to citizen participation:

a. Please provide citations to all local and state laws and regulations which pertain to citizen participation in the Attorney General's environmental cases.

ANSWER: Ohio Revised Code Sections 3705.07, 3735.101, 3745.04, 3745.08, and 3745.09.

b. Does the Attorney General's Office regularly involve citizens at any point during the enforcement of an environmental case? If so, please explain.

ANSWER: Yes, citizens are involved at the stage of a Verified Complaint and later during litigation of a civil judicial case if the citizen is a party in the case.

c. Does your office have policy or guidance that shapes the nature of citizen involvement in environmental enforcement cases and matters? Please provide copies of them.

ANSWER: No written policy or guidance was provided.

d. How is consistency in regard to practices pertaining to citizen involvement assured?

ANSWER: Consistency concerning citizen involvement is provided by the Section Chief and Assistant Chief.

e. Describe how your office tracks citizen complaints about environmental problems.

ANSWER: This tracking is performed by OEPA.

f.. Please set forth and/or provide any policies on following up on citizen complaints, and describe follow-up on citizen complaints.

ANSWER: Again, OEPA is in the lead on citizen complaints and follow up.

g. Please set forth the avenues and procedures available for citizens to raise environmental concerns about a case or facility.

ANSWER: Ohio law provides a clear avenue for handling citizen complaints under the Verified Complaint process.

34. Please identify pertinent state laws, regulations and policies that do present or could present an obstacle to enforcement of Ohio's authorized, delegated or approved environmental programs.

ANSWER: At the time of the interview of the OAG's senior management, they were not aware of state laws, regulations or policies that present or could present an obstacle to enforcement of Ohio's authorized, delegated, or approved environmental programs.

II. CRIMINAL PROGRAM

35. Please provide, with regard to environmental criminal cases adjudicated within the last 5 years, either the charging document, or:

    a. the case name, including all defendants' names, charges filed (provisions of state-law counterparts to RCRA, the Clean Water Act, and the Clean Air Act, as well as general crimes statutes used in environmental crimes cases such as conspiracy, false statements, fraud, attempt, etc.);
    b. description of facility or regulated activity involved; and
    c. description of alleged criminal acts.

ANSWER: See the Criminal Enforcement Docket: "Answers to USEPA Questions"; Criminal Cases Adjudicated 1995-1999, Attachment LEO-05.

36. For each case included above, please provide a sentencing document, or

    a. describe the charges of conviction; and
    b. describe sentences or other result received.

ANSWER: See Answer to Item No. 35 above and Attachment LEO-05.

37. For each of the last 5 years, please identify the number of staff 100% devoted to criminal environmental enforcement in your organization, and describe their job function.

ANSWER: See the Answer to Item No. 38 below.

38. For each of the last 5 years, please identify the number of staff partially devoted to criminal environmental enforcement in your organization, describe their criminal

enforcement and non-criminal enforcement job functions, and the percent devoted to each.

ANSWER:
1995 - 1.4 Attorney FTEs (One attorney FTE full time plus 4 part-time attorneys at roughly 0.1 FTE each); 8 full-time criminal investigators.
1996 - 2.2 Attorney FTEs (Two attorney FTEs full time plus 2 part-time attorneys at roughly 0.1 FTE each); 8 full-time criminal investigators.
1997 - 1.8 Attorney FTEs (One full time; one .5 FTE, one .3 FTE); 8 full-time criminal investigators.
1998 - 1.6 Attorney FTEs (One full time, one .5 FTE, one .1 FTE); 8 full-time criminal investigators.
1999 - 2.0 Attorney FTEs; 8 full-time criminal investigators.
2000 - 2.0 Attorney FTEs; 8 full time criminal investigators.

39. Describe the training on criminal environmental investigations and enforcement provided to your employees within the last 5 years.

ANSWER: Crime scene preservation; interview techniques; computer search techniques; surveillance and equipment; OSHA training; docket analysis; financial investigation; litigation training; training on 4th and 5th Amendment cases; multi-media investigations; review of new regulations and offenses; investigative planning; testimonial techniques; cross-examination; joint training with EPA's criminal investigators and FBI agents.

40. What policies or procedures govern how a decision is made to pursue a criminal vs. civil sanction in an environmental case?

ANSWER: This is a case by case determination. Ohio has no negligent environmental crimes, so to be criminal the act must be reckless, knowing, intentional or purposeful. There are many factors that the Ohio Attorney General's Office considers in determining whether a case should be criminally prosecuted. The principal considerations are as follows: whether there were knowing or purposeful acts or omissions, the type of violation, the degree of harm, the strength or weakness of the evidence, the persuasiveness and demeanor of the witnesses, whether there was deceptive behavior, whether documents or data were falsified, and the reputation of the target and of the witnesses against the target. Both OEPA and the Ohio Attorney General's Office consult their own draft parallel proceedings guidance as well as U.S. EPA's and the United States Department of Justice's parallel proceedings guidance. Generally, the criminal case will proceed first, absent a need to obtain immediate injunctive relief.

41. What policies or procedures are used to deal with parallel proceedings (instances where civil and criminal environmental investigations and/or legal actions are simultaneously

being pursued)?

ANSWER: See Answer to Item No. 40 above.

42. What policies or procedures govern how and when criminal referrals of environmental cases are made by the OEPA to the Attorney General's Office?

ANSWER: There is a formal MOU between the Ohio Attorney General and the OEPA that governs the referral of cases to the Attorney General and particularly addresses the Attorney General's authority to decline cases, but that policy has very seldom been used. Most criminal cases are referred by the OEPA's criminal investigative unit or developed jointly with that unit, but some also originate from County Boards of Health and county prosecutors or federal sources. The Attorney General's Office handles all search warrant matters.

43. How many criminal environmental trials does your office participate in each year, on average?

ANSWER: 2-3 a year.

44. Describe any policies, procedures or programs you use to coordinate with state or local agencies other than the OEPA to uncover potential environmental crimes, such as local police and fire departments, or hazardous materials agencies.

ANSWER: The Ohio Attorney General's Office participates in Task Forces in five major Ohio cities: Cincinnati, Cleveland, Columbus, Toledo and Dayton. The office also conducts a number of training programs for local agencies, including police, fire and hazardous waste agencies.

45. Describe any procedures or policies you have to coordinate environmental criminal investigations and prosecutions with U.S. EPA and the U.S. Department of Justice.

ANSWER: The Ohio Attorney General's Office reported that cooperation with U.S. EPA's criminal investigators, U.S. EPA attorneys, the FBI, and the U.S. Department of Justice continues to be excellent. This also goes for both OEPA's criminal investigation unit and the OAG's criminal investigators.

46. Please provide copies of and citations to statutes which provide criminal sanctions for violations of the state counterparts to the Clean Water Act, RCRA, and the Clean Air Act, and identify any changes or amendments to these statutes that have occurred since the program delegation (CAA, CWA, or RCRA) was approved.

ANSWER: See the Ohio Revised Code. The Ohio Attorney General's Office identified no

amendments or changes to statutes that would impact the minimum requirements under the Clean Air, Clean Water, and Resource, Conservation and Recovery Acts for Ohio's federally approved, delegated or authorized environmental programs. If, however, Ohio desired federal approval of the federal wetlands program under Section 404 of the Clean Water Act, it was noted that Ohio would have to enact statutory provisions for negligent crimes required for such an approval.

III. RESOURCE CONSERVATION AND RECOVERY ACT (RCRA) SUBTITLE C PROGRAM

47. Are there any categories of RCRA cases that the Attorney General's office does not file?

ANSWER: No.

48. Identify any limitations on the State's authority that would prevent the State from issuing permits for facilities covered under the federal RCRA program.

ANSWER: There are none.

49. Identify any limitations on the State's authority that would prevent the State from enforcing a State RCRA requirement or obtaining an injunction to require compliance with the State RCRA program.

ANSWER: There are none.

50. Does the State currently have adequate enforcement authority as defined in 40 C.F.R. § 271.16?

ANSWER: Yes.

51. Can a RCRA C regulated treatment, storage and disposal facilities participate in the Ohio Voluntary Action Program (VAP)?

ANSWER: The Attorney General's Office does not deal with the VAP. The client has not asked their office for an opinion on the VAP.

52. Can the State obtain information required to be reported, collected, developed, maintained or otherwise made available under RCRA from a facility participating in the VAP?

ANSWER: OEPA has not asked the OAG for an opinion on the VAP.

53. Under State law, is the State required to make available information in its files for RCRA facilities participating in the VAP program in substantially the same manner and to the same degree as U.S. EPA is required to make available information under FOIA?

ANSWER: OEPA has not asked the OAG for an opinion on the VAP.

54. What is the legal effect of a no further action letter under the VAP?

ANSWER: OEPA has not asked the OAG for an opinion on the VAP.

55. Can the State enforce RCRA requirements against a facility that has received a no further action letter under the VAP?

ANSWER: OEPA has not asked the OAG for an opinion on the VAP.

56. If a RCRA regulated facility has received a no further action letter under the VAP, can it be required by Ohio to conduct corrective action under its federally authorized RCRA program? Under its State RCRA program?

ANSWER: OEPA has not asked the OAG for an opinion on the VAP.

57. How does Ohio define the term "reclaimed" for the purposes of recycling (see 40 C.F.R. § 261.2(e))?

ANSWER: OEPA has not asked the OAG for an opinion on this issue.

58. How does Ohio define the point where waste exits the unit in which it is generated?

ANSWER: OEPA has not asked the OAG for an opinion on this issue.

59. Region 5 requests to review and discuss the following RCRA cases:

a. AK Steel, Middletown, OH;
b. Georgia - Pacific, Columbus, OH;
c. Envirosafe, Oregon, OH;
d. Brush Wellman, Elmore, OH;
e. PPG Industries, Circleville, OH;
f. WCI Steel, Warren, OH;
g. REGEN (International Steel Services);

h. Agmet;
i. Par West Property (Container Compliance Corp.), Cleveland, OH (OHD060431947);
j. LTV Steel, Cleveland, OH (OHD004218673);
k. Copeland Corp., West Union, OH (OHD053069001); and
l. Mosler, Hamilton, OH (OHD001502632).

ANSWER: The Attorney General's Office provided us with copies of the Worthington Custom Plastic, Wheeling Pittsburgh Steel, Worthington Custom Plastics, Inc., Brush Wellman Inc., LTV Steel Company, Inc., and Envirosafe settlements. The OAG is working jointly with U.S. EPA on A.K. Steel. Georgia Pacific is a federal case.

IV. RESOURCE CONSERVATION AND RECOVERY ACT (RCRA) SUBTITLE D PROGRAM

60. Please list all enforcement actions the Attorney General's Office has taken against Subtitle D violators in the past five years.

ANSWER: See the July 10, 2000 Letter, LEO-01.

61. Under what authorities did the Attorney General's Office take these actions?

ANSWER: See the July 10, 2000 Letter, LEO-01.

62. Did any of these actions include enforcement actions against landfills releasing chemical contaminants into the environment? Identify all such actions.

ANSWER: Yes. For enforcement actions against landfills releasing contaminants into the air, refer to the docket listing provided separately.

63. Did any of these actions include enforcement of Ohio State Implementation Plan nuisance provisions at landfills? Identify all such actions.

ANSWER: No. For enforcement actions using the SIP nuisance provisions, refer to the air docket listing provided separately and cross-check for "landfill."

64. Provide any other information you believe would assist U.S. EPA in determining whether or not Ohio's approved Subtitle D program is adequate.

ANSWER: This will be provided as needed.

V. THE CLEAN WATER ACT (CWA): NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM (NPDES) PROGRAM

65. Has the State enacted any statutory modifications since approval of the NPDES program in 1974 which could impact the State's ability to maintain a program as least as stringent as the federal NPDES program?

ANSWER: No.

66. Has the State promulgated any regulations since approval of the NPDES program in 1974 that could impact the State's ability to maintain a program at least as stringent as the federal NPDES program?

ANSWER: No.

67. Has an Ohio court issued an opinion since approval of Ohio's NPDES program in 1974 that could impact the State's ability to maintain a NPDES program at least as stringent as the federal NPDES program?

ANSWER: No.

68. Region 5 requests review of and discussion about the following Clean Water Act cases:

    a. Scott Fertilizer;
    b. Ashta Chemicals;
    c. LTV Cleveland;
    d. Buckeye Egg;
    e. Wheeling Pittsburgh Steel (four facilities);
    f. Bucyrus, Ohio; and
    g. Elyria, Ohio.

ANSWER: These cases were not discussed in particular; rather a report of cases filed since 1990 was provided in the July 10, 2000 Letter, LEO-01. The Attorney General's Office also provided copies of Consent Decrees for LTV Cleveland and Wheeling Pittsburgh Steel.

VI. CLEAN AIR ACT (CAA) PROGRAM

[Responses are by Brian Zima, supervisor of air enforcement in the OAG's Columbus, Ohio office, unless otherwise indicated.]

69. What is your role? How many attorneys are there in the Attorney General's Office which work on air cases? What are the number of pending air cases?

ANSWER: I am the supervisor in charge of the Attorney General's air enforcement program. There are 5 FTEs allocated for air enforcement in the Attorney General's Office. I'm relatively new to the air enforcement program.
Unlike some of the other programs (such as Water and RCRA), the Attorney General's Office does not have a weekly enforcement conference with the air OEPA program.
There are currently 34 open air cases referred by OEPA with the Attorney General's Office right now.

70. Are you aware of any recent court rulings which could impact any of the approved or delegated air programs?

ANSWER: No, I'm not aware of any.

71. What role does the Attorney General's Office take in setting penalties and in settling cases?

ANSWER: The Attorney General's Office believes in firm but fair litigation. The office first sends an "invitation to dance letter" to a defendant to see if the defendant would like to enter settlement discussions. Settlements will encompass both injunctive relief and penalties. In setting penalties, and settling cases, the Attorney General utilizes the EPA's 1991 CAA penalty policy. The courts have upheld Ohio's use of the EPA CAA penalty policy (See Hoge Lumber). Ohio was also the first state to litigate the appropriateness of recovering economic benefit in a 1983 Clean Water Act case (See Dayton Malleable).

The Attorney General's Office negotiates within the limits of the EPA's 1991 CAA penalty policy. The Attorney General will reduce penalties if a source is de minimis and depending on a source's willingness to install controls and take limitations.

72. How much time does the Attorney General's Office allow to negotiate a settlement with a defendant before filing a judicial complaint?

ANSWER: If it appears that a defendant is not willing to settle a case in a pre-filing situation, the Attorney General's Office will send the defendant a letter setting a date by which Ohio will

file suit. The Attorney General sets this filing deadline on a case-by-case basis.

Once a case settles, a Consent Decree and complaint are simultaneously filed with the court.

73. How can citizens participate in actions taken by your office in air cases? Can citizens comment on Consent Decrees before they are filed?

ANSWER: Citizens don't participate in the judicial enforcement of air cases. There is no public notice of lodging of Consent Decrees nor any chance for citizens to comment on Consent Decrees. Also, the Attorney General's Office and the OEPA don't normally solicit SEP ideas from citizens.

Citizens are sometimes involved indirectly when the Attorney General's Office works with local officials in enforcing an air case. Also, a portion of all penalties go to a Tree Fund, which was set up to provide tree planting in Ohio.

74. What is the Attorney General's role in case development?

ANSWER: Sometimes, the Attorney General's Office works with OEPA on a case before it is referred. However, most of the Office's involvement comes after a case is referred.

Also, OEPA can ask the Attorney General's Office to make formal opinions. However, the Attorney General's Office has not issued any formal opinions under the air program.

OEPA almost never refers penalty only cases. Most cases have both penalty and compliance issues.

75. How closely does the Attorney General's Office work with the OEPA once a case is referred?

ANSWER: Once a case is referred, an OEPA Central Office (CO) coordinator (of whom there are 4) works with the OAG in case development and management. Jim Orlemann and Tom Rigo are the OEPA CO coordinators for air. The OAG attorneys also work with the District Office (DO) coordinators when the case came from one of the DO's. However, the CO coordinators are generally the OAG's main contacts and these coordinators go to all of the inter-agency meetings between the OAG and OEPA. Assistant Attorneys General also work directly with individual CO, DO, and local authorities inspectors concerning technical issues for each case.

76. Please provide a list of pending cases.

ANSWER: [This question could not be answered in the scope of this interview. OEPA has

independently provided this information to U.S. EPA in the June 21, 2000 Letter, LEO-01.]

77. In what capacity does the Attorney General's Office work with the local authorities? Does the Attorney General's Office examine local authorities laws, or do anything to ensure enforcement consistency between the local authorities?

ANSWER: [By Joseph P. Koncelik] The local authorities are independent of OEPA. They renew a contract between themselves and OEPA each year which allows them to implement the air programs. The relationship is not a formal delegation, but is contract driven. OEPA can audit local authority programs. However, OEPA will not generally audit local authorities unless OEPA feels that the local authority's program is deficient in some way. If the local authority is doing a great job, they won't be audited. OEPA recently audited Cleveland's air program, and suggested corrective action steps to be taken by the local authority due to problems found with the program.

OEPA ensures consistency between the local authorities since the CO reviews all permits issued by local authorities, and all referrals of enforcement actions go to the CO. Once an enforcement case is referred from a local authority to the OEPA, the CO takes the lead on the case.

VII. CROSS-MEDIA AND MULTI-MEDIA ENFORCEMENT

78. How does your office manage cross-media and multi-media environmental enforcement actions?

ANSWER: This is the responsibility of and is coordinated by the Section Chief and Assistant Chief.

79. Is your office involved in cross-media and multi-media targeting of environmental enforcement cases that originate from OEPA? If so, please describe your role in that targeting.

ANSWER: No.

80. Does your office meet with OEPA to discuss cross-media/multi-media case screening? If so, please describe your role in that screening, including discussions of how resources (people, dollars, equipment, support) are assigned to cross-media and multi-media cases, and how are priorities established for those activities?

ANSWER: No, screening and targeting is performed on a program-by-program basis.

81. What is the role of OEPA attorneys in conducting cross-media and multi-media enforcement cases?

ANSWER: Their role is no different than in any other case.

82. What is the role of the Ohio Attorney General's Office in cross-media and multi-media environmental enforcement cases?

ANSWER: Cross-media and multi-media case are regularly discussed at weekly, internal meetings within the Section.

83. For example, how were cross-media enforcement activities (e.g., targeting; screening; enforcement notices; administrative enforcement actions; civil judicial enforcement; criminal investigations, enforcement, and prosecutions, if applicable) coordinated for the following facilities, all of which are mentioned in the petitions:

    a. AK Steel, Middletown;
    b. Georgia-Pacific, Columbus;
    c. Tremont City Landfill, Clark County;
    d. Nylonge, Elyria;
    e. Worthington Custom Plastics, Inc., Mason;
    f. WTI, East Liverpool; and
    g. Danis/Clarkco, Springfield, Ohio.

ANSWER: Coordination was accomplished by senior management within the Section. See the appended dockets for the status of the individual cases mentioned above.

VIII. FOLLOW-UP QUESTIONS ON CAA PROGRAM

Questions Pertaining to NSPS/PSD Implementation by OEPA Asked of the Ohio Attorney General's Office Via E-mail on the Following Dates

[U.S. EPA sent two sets of E-mail questions to Brian Zima, supervisor of air enforcement in the Ohio Attorney General's Office, Columbus, Ohio. The questions are in regular text, and Brian's answers are in Italics.]

These questions were posed by U.S. EPA of the Ohio Attorney General's Office via a May 23, 2000 email:

84. Does OEPA and/or the Ohio Attorney General's Office have the authority to enforce

these federal regulations directly?

a. If Ohio can enforce these federal regulations directly either judicially or administratively, what is the source of that authority in regard to both administrative and/or judicial enforcement? Please explain fully how these authorities give Ohio the ability to enforce these federal regulations, and provide relevant citations. Are there any statutory, regulatory, or procedural limitations to this authority?
b. If Ohio can enforce these federal regulations directly in State court, does Ohio have both criminal and civil authority? Please fully explain your answer, and give relevant citations.
c. If Ohio cannot enforce those federal regulations directly either judicially and/or administratively, please explain why not. Is it a general prohibition that Ohio can't enforce federal laws or regulations unless there is a state implementing law? Are there any court rulings that limit Ohio's authority to enforce federal laws or regulations generally, or these regulations in particular? Are there any Ohio laws or regulations that directly preclude Ohio from enforcing these federal regulations?
d. In your responses to the above questions (a) through (c), please differentiate between the authorities of each of the districts and each of the local agencies. What are the differences between them? Do some have enforcement authority, while others do not? Please explain your answer, especially as they pertain to both judicial and administrative enforcement.
e. In your responses to the above questions (a) through (c), is the analysis any different for injunctive relief versus penalty actions? If so, please explain the differences.

85. Has Ohio administratively promulgated rules or regulations, or legislatively passed laws that enact the permitting requirements of the NSPS and PSD programs and/or allow for enforcement against facilities which fail to comply with either the state or federal NSPS and PSD provisions? Please explain fully, and give citations. Have any of these laws been approved as part of the Ohio SIP? When and which ones?

[Background Information: the NSPS program was delegated to Ohio on June 1, 1988, and the PSD program was delegated to Ohio on November 7, 1988. The NSPS federal regulations are found at 40 C.F.R. Part 60, and the PSD federal regulations are found at 40 C.F.R. 52.21.]

These Answers to the May 23, 2000 U.S. EPA questions were provided in a June 30, 2000 email response from Brian Zima:

ANSWER:

PSD

Specific PSD rules are set forth at Ohio Adm. Code 3745-31-11 through 3745-31-20. These rules relate to permits to install (PTIs). If there are gaps in coverage between state and federal rules, the Agency relies on provisions in PTI and permit to operate (PTO) rules that condition permit issuance upon compliance with "applicable laws." The relevant PTI rule is Ohio Adm. Code 3745-31-05(A)(2), which provides:

The director shall issue a permit to install. . . , if he determines that the installation or modification and operation of the air contaminant source will:

(1) Not prevent or interfere with the attainment or maintenance of ambient air quality standards; and

(2) Not result in a violation of any applicable laws, including but not limited to:

* * *

(c) Federal standards of performance of new stationary sources adopted by the administrator of the United States Environmental Protection Agency pursuant to section 111 of the Clean Air Act and the regulations promulgated thereunder;

(d) Requirements pertaining to installation of major stationary sources or major modifications in attainment and non-attainment areas as contained in rule 3745-31-10 of the Administrative Code through rule 3745-31-27 of the Administrative Code.

(e) "National Emission Standards for Hazardous Air Pollutants" adopted by the administrator of United States Environmental Protection Agency pursuant to section 112 of the Clean Air Act and the regulations promulgated thereunder (including 40 C.F.R. Part 61 and 40 C.F.R. Part (63);

"Applicable laws," in turn, is defined in Ohio Adm. Code 3745-31-01 (F) to mean "any applicable provisions of Chapter 3704, . . . the Clean Air Act, as amended, . . . and rules and regulations of the administrator of the United States Environmental Protection Agency."

Similarly, in the PTO rules, Ohio Adm. Code 3745-35-02(D) provides:

(D) [PTO] Terms and conditions:

* * *

(2) Any permit to operate issued by the Director shall be subject to revision in response to changes in applicable air pollution control law or other factors affecting the compliance of the source or control facility with the standards or conditions of the original permit.

* * *

(6) The director may include such other terms and conditions as are necessary to ensure compliance with applicable air pollution control law or to gather information about ambient air quality, emission levels, or other aspects of the source operation.

See also Ohio Adm. Code 3745-35-02(C) regarding conditioning permit to operate issuance upon compliance with applicable air pollution control law. "Applicable air pollution control law" is defined in Ohio Adm. Code 3745-35-01 (B)(2) to include ". . . the Clean Air Act, as amended; rules and regulations of the administrator of the United States Environmental Protection Agency."

NSPS

Federal provisions are made applicable through the same reference in the PTI and PTO provisions to applicable laws. In addition, there are specific references to NSPS requirements in the PTI rules at Ohio Adm. Code 3745-31-05(A)(2)(c) [see above] and the PTO rules at 3745-35-02(C)(4)(b).

Enforcement

As to the enforcement of these provisions, R.C. 3704.05(C) provides that no permit holder shall violate any of its terms or conditions. R.C. 3704.06(A) and (B) provides that the Attorney General upon request of the Director, shall prosecute or bring a civil action against any person who violates R.C. 3704.05. As R.C. 3704.06(A) and (B) provide, authority to enforce violations of R.C. 3704.05 includes both authority to prosecute criminally and to bring civil actions to obtain civil penalties or injunctive relief. All enforcement authority runs through the Director and his referrals to the Attorney General. Thus, there are no variations in the enforcement authority between districts or local air agencies, all of which act as the Director's authorized representatives. There are no differences in the enforcement authority depending on whether injunctive relief or penalties are sought.

Administratively, the Director may issue orders directing a person to comply with a permit term or rule. Pursuant to R.C. 3704.05(G) and 3704.06, failure to comply with the Director's order is judicially enforceable through referral to the Attorney General's office. All of these regulations I have referred to are part of the Ohio SIP.

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I believe this information should address the issues raised in your e-mail.

These follow-up questions were posed by U.S. EPA to the Ohio Attorney General's Office via a July 6, 2000 email:

86. a. For those facilities which don't have a PTI or PTO incorporating the delegated federal PSD or NSPS requirements, can the State bring a judicial enforcement case for violation of PSD or NSPS emission standards contained only in the delegated federal regulations?

b. If Ohio can't enforce the federal regulations absent their inclusion in a PTO or PTI, has the State promulgated equivalent State provisions for the federally delegated NSPS and PSD regulations?

87. For those facilities which fall under the NSPS or PSD federal regulations and which have failed to submit a permit application covering those requirements, can Ohio bring a judicial enforcement case for failure to apply for a permit on the independent basis that the facility has not submitted a permit application incorporating the NSPS and PSD federal regulation requirements?

These Answers to the July 6, 2000 U.S. EPA follow-up questions were provided in a August 4, 2000 email response from Brian Zima:

ANSWER:

Response to Item No. 86.a.: Yes, for those facilities which don't have a PTI or PTO incorporating the delegated federal PSD or NSPS requirements, the State can effectively bring a judicial enforcement case for violation of PSD or NSPS emission standards. There are mainly three situations where an operating facility, of a size or nature to make it subject to PSD or NSPS requirements, would not have a PTI or PTO incorporating those standards:

1) *The company is operating illegally without a PTI or PTO, in addition to operating in violation of PSD or NSPS requirements.*

2) *The company has a PTI or PTO, but has modified its operations such that it becomes subject to PSD or NSPS requirements, but fails to obtain the necessary permit modification.*

3) The company has been issued an a PTI or PTO, but due to faulty application information or for some other reason, PSD or NSPS requirements were not imposed.

In each of these cases, we have alleged that the operator is violating the permitting requirements discussed in my last e-mails (Ohio Adm. Code 3745-31-02, 3745-31-11 to 3745-31-20, 3745-35-02, 3745-77-02, as applicable), and, consequently, is in violation of R.C. 3704.05(G). That section provides, "No person shall violate any order, rule, or determination of the director . . . ." Violations of R.C. 3704.05 make the violator subject to civil penalties and injunctive relief. R.C. 3704.06. Although we do not allege a direct violation of PSD or NSPS emission standards contained in the federal regulations, in the negotiation and prosecution of the judicial enforcement action, PSD and NSPS violations are taken into account in two ways. First, the civil penalty is calculated in a way that addresses the emission and permitting violations associated with the PSD and federal NSPS requirements. Second, in the judicial consent decree, we make sure that the technical and permitting remedies address the applicable federal NSPS or PSD requirements.

Response to Item No. 86.b.: As you know, U.S. EPA has delegated the operation and enforcement of both the PSD and NSPS requirements to the OEPA. U.S. EPA issued the delegation primarily on the basis of the PTI rules and the underlying requirements. There has not been a fundamental change in the standards and the ability to apply and enforce these requirements continues today. The Ohio PTI rules have been approved as part of the State Implementation Plan.

PSD

In previous years, Ohio Adm. Code 3745-31-05(A) contained general language that referenced the federal PSD rules. We have recently modified the rules with the specific technical requirements of the PSD program in order to obtain approval of the PSD State Implementation Plan.

In April, 1996, Ohio promulgated State provisions that are largely equivalent to federal PSD regulations. Compare 40 C.F.R. 52.21 to Ohio Adm. Code 3745-31-11 to 3745-31-20. There are some differences. See, for example, the definition of "significant" at 40 C.F.R. 52.21(b)(23) and Ohio Adm. Code 3745-31-0, as to particulate matter; or see the addition of the phrase, "the director shall require through the issuance of a permit to install," in Ohio Adm. Code 3745-31-11(B) and (C), as compared to 40 C.F.R. 52.21(c) and (d). I have not made a comprehensive comparison of the state and federal provisions to identify any additional differences or to evaluate the impact of any such differences.

NSPS

As I mentioned in my first e-mail, federal provisions are made applicable through the PTI and PTO provisions. In addition, there are specific references to NSPS requirements in the PTI rules at Ohio Adm. Code 3745-31-02(A)(2)(c) [see above] and the PTO rules at 3745-35-02(C)(4)(b). (In this sense, the Ohio program is more thorough than the federal program since the PTI program is a preconstruction review program that requires a source to apply for and obtain a PTI prior to commencement of construction, where the federal NSPS program only requires notice by the applicant.) Beyond making the federal requirements applicable through permit, by and large, Ohio has not separately promulgated state equivalents of the NSPS rules. But see and compare Ohio Adm. Code Chapter 3745-75 and 40 C.F.R. 60.50c to 60.58c; and Ohio Adm. Code 3745-76 and 40 C.F.R. 60.30c to 60.36c.

Response to Item No. 87: Yes. See my Answer to Item No. 86.

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OEPA: SIU; OAG: Prosecutors and BCI (CRIM)

REVIEW OF OHIO'S CRIMINAL ENVIRONMENTAL ENFORCEMENT PROGRAM

SUMMARY

U.S. EPA is reviewing the State of Ohio's criminal environmental enforcement program as a part of a review of the State's implementation of its federally approved, delegated or authorized air, water and waste environmental programs. The agencies that make up the program include the OEPA, the Ohio Attorney General's Office, and the Bureau of Criminal Identification and Investigation (BCI). The review concludes that overall the Ohio criminal environmental program is excellent, and may be considered one of the best in the nation. Over the 5 years of the review period, Ohio has brought an impressive number of prosecutions under a wide variety of statutory areas, including air, water, hazardous waste, and traditional criminal statutes. One trend of concern was noted: that the number of prosecutions per year over the review period has significantly declined.

U.S. EPA's criminal enforcement review has preliminarily made findings as to eight factors:

1) Overall resources in Ohio devoted to criminal environmental enforcement are among the highest of any midwestern state enforcement programs.

2) The level of training provided for the Ohio investigative and prosecutive staff is appropriate, and is compatible with training provided to U.S. EPA Special Agents.

3) The statutory authority available to prosecute environmental crimes appeared very good.

4) The overall commitment to developing lead information appeared good. However, the number of environmental crimes prosecutions per year has declined over the period from 1995 to the present, which may be attributable to a potential problem identified in the main review concerning OEPA's identification of violators.

5) The case screening process used by OEPA and the Ohio Attorney General's Office is very similar to the federal system, and appears very good.

6) The parallel proceedings practices followed by OEPA and the Ohio Attorney General's Office closely follow the federal procedure, and ensure that any public health issue is addressed first, even if the resulting activity reduces or eliminates investigative options available for criminal enforcement.

7) Relationships with federal, state and local authorities involved in criminal environmental enforcement, including agents of U.S. EPA's Criminal Investigation Division (U.S. EPA-CID), are excellent.

8) A review of environmental cases prosecuted by the Ohio program over the five year period showed a very good overall level of cases brought, and an excellent mix of cases prosecuted in a variety of program areas. A decreasing trend in the numbers of prosecutions since 1995 was noted.

I. BACKGROUND

Each of the three federal statutory programs (Air, Water, RCRA) pertinent to this review includes a general requirement that, prior to approval/delegation/authorization, a state must have an adequate enforcement program. Coupled with a demonstration of an adequate enforcement program is a requirement that the state submit evidence that it has enacted statutory provisions which will support criminal enforcement of environmental violations. Thus, the nature of a state's criminal environmental enforcement program is relevant to a review of the state's implementation of its federally approved, delegated or authorized air, water and waste environmental programs. As each of these programmatic requirements is similar, U.S. EPA has performed an overall review of Ohio's criminal environmental enforcement program.

Environmental criminal enforcement, a species of white collar crimes, is one of the most demanding areas of law enforcement today. White collar crimes engender an often uncomfortable interaction between the regulated community and traditional law enforcement. While a civil enforcement program normally conducts its investigative activities through such routine techniques as inspections, information requests, and mandatory reporting, criminal law enforcement utilizes a wider variety of investigative techniques and statutory powers, such as off-site interviews, grand jury subpoenas, search warrants for documents as well as physical evidence, arrests, grants of immunity, and consensual monitoring. These techniques present a different and often far more intrusive interface with the business community. In addition, a criminal enforcement arm of an agency must prove its cases beyond a reasonable doubt, and must show that a defendant knowingly or negligently violated the law.

As a result of these factors, the criminal investigative process is conducted by personnel specially trained and experienced in law enforcement. Although an agent must be prepared to make arrests (rare in the white collar crimes arena), their primary function is to conduct interviews and analyze sophisticated documentary evidence in light of extraordinarily complex regulatory programs. Agents must build a case a prosecutor will accept for prosecution. Throughout, agents must conduct themselves with the utmost of professionalism, courtesy and respect for those under investigation as well as the subjects and witnesses involved.

To obtain these skills requires a high degree of training coupled with years of closely supervised experience. To be successful, an environmental criminal enforcement program must attract, train, and retain investigators and prosecutors with the highest capabilities and standards of professionalism.

U.S. EPA has had a formal criminal environmental enforcement program since 1982. Through informal discussions over many years with a number of U.S. EPA and state personnel involved in criminal environmental enforcement, including federal and state prosecutors, federal and state law enforcement agents, and local agency staff, several key capabilities have emerged which are crucial to a successful criminal program in the environmental area. These capabilities include:

1) Resources - Investigative staff must be dedicated to a law enforcement function, and in sufficient numbers to bring cases which will provide a deterrent effect.

2) Training - Specific training unique to law enforcement and environmental regulation must be provided to ensure the staff are capable of responsible law enforcement performance.

3) Statutory Authority - Adequate statutory authority must exist to bring criminal actions.

4) Information Gathering - The criminal investigation organization must be capable of gathering tips and leads of potential criminal activity originating within its own agency, and must effectively seek out lead information generated outside the agency as well.

5) Case Screening - Law enforcement organizations must consistently screen their investigations to ensure that their resources are directed at appropriate targets. As law enforcement investigations tend to be highly resource intensive, screening is also an essential means to ensure effective use of personnel.

6) Internal Parallel Coordination - The criminal program must address issues that arise from the existence of a parallel civil aspect of the organization, which may pursue investigations and legal actions against the same entities concerning the same facts. Parallel actions raise issues for the overall agency such as: 1) identifying the priority of conflicting goals such as clean-up versus punishment, 2) preserving secrecy of investigations, 3) protecting informant identities, 3) addressing potential interference with investigative techniques, and 4) preserving grand jury secrecy.

7) External Law Enforcement Relationships - The organization must be capable of maintaining positive relationships with other law enforcement organizations also involved in investigating environmental or related criminal matters, such as U.S. EPA's Criminal Investigation Division.

8) Case Output - Sheer numbers of prosecutions should not be, by themselves, determinative of a successful criminal environmental enforcement program. Nevertheless, a successful program must generate at least a minimum level of prosecutions to achieve an effective deterrent function. The cases should be brought in a wide variety of factual and legal areas to maximize the deterrent effect across program boundaries, and the ultimate punishment achieved should include a proportion of jail sentences.

II. ADMINISTRATIVE RECORD PERTAINING TO THE CRIMINAL ENVIRONMENTAL ENFORCEMENT REVIEW

The State of Ohio's criminal enforcement program consists of, in the main, the employees of the Special Investigative Unit of the OEPA (SIU), prosecutors in the Ohio Attorney General's Office (OAG), and the agents of the Bureau of Criminal Identification and Investigation (BCI), who report to the OAG.

To assess the criminal environmental enforcement capabilities of the OEPA and the Ohio Attorney General's Office, U.S. EPA provided lists of questions, seeking information about the capabilities identified above. The documents provided by U.S. EPA were entitled Questions Prior to Review of Criminal Enforcement Program: OEPA, and Questions Prior to Review of Criminal Enforcement Program: Ohio Attorney General. A joint written response was prepared by the Ohio Attorney General's Office, addressing the first several questions relating to cases prosecuted during the last five years. In addition, the Attorney General's Office provided U.S. EPA with Annual Reports from that office, which included summaries of their accomplishments during the years 1995 through 1999. This information was supplemented with oral information provided during an on-site interview conducted in April, 2000 in Columbus, Ohio. The participants in that on-site review included representatives of U.S. EPA, OEPA and the Ohio Attorney General's Office. Notes of the verbal information provided at that meeting were prepared by Bertram C. Frey, Deputy Regional Counsel, U.S. EPA. Region 5.

Supplemental information was provided by OEPA in a telephonic discussion in May 2000 among David M. Taliaferro, Regional Criminal Enforcement Counsel, U.S. EPA, Region 5, Kevin Clouse, Manager, Emergency Response and Special Investigations Unit, OEPA, and Joseph Koncelik, Deputy Director, OEPA.

In addition, an interview of the Special Agent in Charge of the U.S. Environmental Protection Agency Criminal Investigation Division office in Cleveland, Ohio was conducted to obtain comparative information on the State's performance in this area vis-a-vis other Midwestern states. This U.S. EPA-CID supervisor is currently responsible for federal criminal environmental investigations in the states of Ohio and Michigan. Notes of this interview were prepared by

Mr. Taliaferro.

Each of the documents described above has been entered into the docket pertaining to this review of Ohio's environmental protection programs.

III. PROGRAM ELEMENT REVIEW

A. Resources

During the on-site interview, the Ohio Attorney General's representative reported the following resources had been devoted to criminal enforcement over the last five years, including both Attorney General and Bureau of Criminal Identification resources (Full Time Equivalents, FTEs, reflect the use of attorneys working part-time in this area, at roughly 0.1 FTE per attorney):

1995 - 1.4 Attorney FTEs (one full-time attorney; four 0.1 FTEs part-time attorneys)
- 8 Full-time investigators

1996 - 2.2 Attorney FTEs (two full-time; two 0.1 FTEs)
- 8 full-time investigators

1997 - 1.8 Attorney FTEs (one full-time; one 0.5 FTE; one 0.3 FTE)
- 8 full-time investigators

1998 - 1.6 Attorney FTEs (one full-time; one 0.5 FTE; one 0.1 FTE)
- 8 full-time investigators

1999 - 2.0 Attorney FTEs (two full-time)
- 8 full-time investigators

2000 - 2.0 Attorney FTEs (two full-time)
- 8 full-time investigators

The OEPA representatives reported that in 1995, OEPA employed 6 full-time investigators in its Special Investigations Unit (SIU) Central Office in Columbus, and 4 full-time investigators in District offices around the State. The number of employees has remained steady since then, at 9-10 employees. There are now 3.75 FTEs of investigative resources in the Central Office, and 5.25 FTEs in the District Offices. The shift to District Offices is an attempt to move staff closer to the investigative work areas. One of the currently budgeted slots is vacant.

Thus, the level of resources devoted to environmental criminal enforcement appears relatively

steady over the last five years, and has even increased slightly.

Based on interviews with a U.S. EPA-CID supervisor, these resource levels appear to be at the upper end of the resources made available by other Midwestern state criminal environmental enforcement programs.

B. Training

The Ohio Attorney General representatives reported the following specific training relevant to environmental criminal enforcement was provided to its employees over the last 5 years:

Crime scene preservation, interview techniques, computer search techniques, surveillance and equipment, OSHA training, docket analysis, financial investigations, litigation training, training on cases presenting issues under the 4th and 5th Amendments to the U.S. Constitution, multi-media investigations, review of new regulations and offenses, investigative planning, giving court testimony, cross-examination, joint training with U.S. EPA's CID agents and FBI agents.

OEPA representatives reported that SIU Investigators are initially trained in environmental sampling, emergency response, hazardous substance training, fire chemistry, chemistry of hazardous materials, and regulatory areas under the CAA, CWA, and RCRA (among other statutes). Investigators have also received basic and advanced environmental investigations course through the Northeast Hazardous Waste Project, an EPA-funded regional organization which provides specialized training in this area. Investigators also receive a 40-hour safety course sponsored by OSHA, training in confined space entry, and in-house training in interviewing techniques, surveillance technology, current developments in search and seizure law and updates on environmental laws and regulations. Most of the SIU investigators also have previous experience as civil inspectors for OEPA in areas such as hazardous waste and wastewater inspections.

The U.S. EPA-CID supervisor reported that he is familiar with the training programs undertaken for investigators in the Ohio BCI and OEPA SIU with regard to environmental crimes. He feels the level of training for the BCI and SIU investigators is appropriate, and is compatible with training provided to U.S. EPA Special Agents (with the obvious exception of firearms training, as the SIU inspectors are not authorized to carry firearms). In addition, the supervisor reported that U.S. EPA CID special agents participate with BCI and SIU investigators in joint training conducted by managers from the three agencies.

C. Statutory Authority

Prior to receiving authorization/delegation/approval under the particular environmental statutes, states must assure U.S. EPA that they have the requisite statutory authority to conduct criminal

prosecutions. Ohio has previously submitted citations to its authorities, which have been approved. For this review, representatives of the Ohio Attorney General's Office stated that there have been no amendments or changes to statutes that would affect the minimum requirements under the Clean Air Act, the Clean Water Act, or RCRA of Ohio's federally approved/delegated/authorized environmental programs.

Representatives of the Ohio Attorney General's Office also noted that its criminal statutes include crimes for a hierarchy of intent levels, including reckless, knowing, intentional, and purposeful. The federal criminal statutory system consists almost exclusively of knowing and negligent violations. Although the State has no negligent-level intent crimes in this area, the four different levels of intent present in the State's environmental statutes represent a broader array than the federal system. The state's diverse criminal statutes thus allow Ohio to more precisely charge a wide variety of environmental violations as criminal acts, when compared to the federal system.

Representatives of the Ohio Attorney General's Office did note that if Ohio were to seek federal approval of the wetlands program under §404 of the CWA, Ohio would have to enact statutory provisions for negligent crimes necessary to obtain such approval.

D. Information Gathering

Representatives of the Ohio Attorney General's Office reported that they employ a number of information gathering techniques to surface potential criminal leads. First, the Attorney General's Office relies on the OEPA. The OEPA, with broad regulatory authority, has constant interaction with the regulated community in a variety of contexts. All of these relationships are important resources in developing a network for receipt of allegations of criminal activity, such as deliberate violations, false reporting, and other criminal conduct.

There is a formal Memorandum of Understanding (MOU) between the OEPA and the Attorney General which governs the referral of cases to the Attorney General, but which does not specifically address criminal matters.

The Ohio Attorney General's Office notes that it has relationships with County Boards of Health and county prosecutors, which may provide leads.

The Ohio Attorney General's Office and OEPA employees also participate in four state/federal criminal environmental Task Forces, based in Cincinnati, Cleveland, Columbus, and Dayton. The membership of these Task Forces have included (in addition to U.S. EPA-CID and U.S. Department of Justice representatives): the FBI, the U.S. Department of Transportation, the U.S. Coast Guard, the Defense Criminal Investigative Service, county prosecutors, various major metropolitan police and fire departments, county sheriff's offices, and may include organizations

such as local sewage treatment authorities.

The Ohio Attorney General's Office also notes that it conducts a number of training programs for local agencies, including police, fire, and hazardous waste agencies.

SIU investigators are located within District offices to provide regular contact with personnel receiving original information which may have criminal investigative potential. In addition, the investigators provide cross-training to civil staff to sensitize them to the availability of criminal investigative responses to lead information, and to familiarize them with examples of when such responses might be appropriate. These diverse relationships provide Ohio with a wide range of contacts within the regulatory community, which supplements the lead-generating capabilities of the OEPA.

The overall commitment to developing lead information appeared good. However, two factors have been noted during the review which deserve comment. First, as is discussed later in the Case Output section of this report, total environmental crimes prosecutions have declined over the period from 1995 to the present. Second, reviewers of OEPA's civil program have noted that the agency needs to upgrade its efforts to identify violators. Taken together, this suggests that the Ohio criminal environmental program's ability to develop potential criminal leads may be negatively affected.

E. Case Screening

A law enforcement organization must utilize internal controls to ensure that investigative resources are directed at appropriate targets, and that resources are committed to investigations that will likely result in prosecutions. For example, if an organization focuses on investigations which have no element of traditional criminality (i.e., deliberate cheating, lying, fraud and cover-up) the cases may not have enough appeal to a jury to be successfully prosecuted. Case screening refers to the policy objective of determining, early in the investigative process, if a priority for criminal investigation is present.

Representatives of the Ohio Attorney General's Office note that they consider many factors in their criminal case selection process, including whether there were knowing or purposeful acts or omissions, the type of violation, the degree of harm, the strength or weakness of the evidence, the persuasiveness and demeanor of the witnesses, whether there was deceptive behavior, whether data or documents were falsified, and the reputation of the target and of the witnesses against the target.

These criteria closely follow the federal policy objectives expressed in The Exercise of Investigative Discretion, a 1994 U.S. EPA policy on the subject. In that document, U.S. EPA identified two key elements as case selection criteria: significant environmental harm (including

potential harm) and culpable conduct. Examples of culpable conduct include a history of repeated violations, deliberate misconduct resulting in a violation, concealment or falsification, tampering with monitoring or control equipment, and unlicenced activity.

Representatives of both the OEPA and the Attorney General's Office stated that their case screening process is very similar to the federal system.

F. Internal Parallel Coordination

One of the key attributes of a successful environmental criminal enforcement program is a positive relationship between the civil and criminal programs. When possible criminal leads surface, they may raise immediate issues of conflicting priority.

Civil and criminal investigations use different investigative techniques, involve different resource demands, and may even pursue different goals. When civil and criminal programs each seek to enforce against the same parties concerning the same facts, close coordination to ensure a cohesive strategy is imperative.

The Ohio Attorney General's Office reports that its policy is to examine each case to determine whether there is a need for immediate (civil) injunctive relief. If so, that case has priority for civil response, typically an emergency clean-up. In the absence of such factors, the criminal case will proceed first.

Complaint information received by OEPA is recorded by the program staff receiving it, and maintained in a complaint log by each program. Information with criminal enforcement potential is forwarded directly to the SIU investigators. The SIU procedure is to record the receipt of potential environmental crimes information in a database, as well as maintaining a record of Hotline calls received.

Although there is a MOU between the OEPA and the Ohio Attorney General, it principally addresses civil rather than criminal referrals. Criminal referrals originate with the SIU investigator, who routs them through the SIU manager, who forwards them ultimately to the Director of OEPA. The referral is also routed through the affected OEPA program office for its information and input, if any. Almost all referrals are discussed in advance with the Ohio Attorney General's Office, to ensure the case is one in which the Attorney General is willing to pursue.

According to both OEPA and Ohio Attorney General's Office representatives, these procedures closely follow the federal procedure. Federal policies determine that whenever the public health is endangered, that issue must be addressed first, even if the resulting activity reduces the investigative options available for criminal enforcement personnel, or even eliminates the

potential for such a case entirely. If, however, these factors are not present, representatives of the civil and criminal programs confer and determine how best to proceed. See U.S. EPA's Parallel Proceedings Policy, dated June 22, 1994.

Representatives of the Ohio Attorney General's Office report that they follow the federal parallel proceedings policies in this regard, and that they adhere to their own draft policy, which is consistent with the federal guideline.

Representatives of both OEPA and the Ohio Attorney General's Office stated that they are sensitive to the need to coordinate differing policy objectives between the civil and criminal programs, and that they follow a policy consistent with U.S. EPA's.

G. External Law Enforcement Relationships

A professional law enforcement program also requires that a criminal program have a positive relationship with other organizations conducting investigations in the same or related fields. In this case, environmental criminal investigations may involve U.S. EPA CID, the FBI, the U.S. Department of Justice, the U.S. Department of Transportation, the U.S. Coast Guard, the Defense Criminal Investigative Service, county prosecutors, various major metropolitan police and fire departments, county sheriff's Offices, and may include organizations such as local sewage treatment authorities (who have enforcement authority under the CWA). The OAG's representatives report that their Office's relationships with such federal, state and local authorities, including U.S. EPA CID, is excellent.

An interview with a supervisor within U.S. EPA-CID bears this out. The level of cooperation provided by the Ohio investigators and the various Ohio Attorneys General is reported to be outstanding. Federal and state agents in Ohio have jointly conducted numerous investigations, each contributing staff for such investigative tasks as interviews, document reviews, and search warrants. The U.S. EPA-CID supervisor regards the Ohio Attorney General's Office, BCI and SIU as essential partners in these task forces, providing investigative and prosecutorial resources on both state and federal cases.

Ohio Assistant Attorney Generals have been appointed as Special Assistant United States Attorneys to prosecute cases in federal court. One such designated Special Assistant took over a federal trial when his partner, an Assistant U.S. Attorney, was hospitalized mid-trial and the federal judge declined to grant a continuance.

According to the U.S. EPA-CID supervisor, federal and state investigators in Ohio have worked closely together in a number of joint investigations and prosecutions. From this experience, the supervisor is aware that the State's investigative personnel are highly professional, highly motivated and work well with U.S. EPA-CID agents. Having SIU and BCI investigators

available to work with U.S. EPA agents provides a significant benefit to all three agencies. The availability of Ohio personnel significantly enhances the capability of each agency to respond, day or night, to tips and leads of ongoing potential criminal activity, which can require immediate attention.

Additionally, U.S. EPA-CID staff are not trained to take environmental samples, whereas SIU investigators are trained, equipped and capable of taking such samples. This capability is a large benefit when exigent circumstances such as ongoing illegal discharges occur miles away from the nearest local environmental agency staff.

According to the U.S. EPA-CID supervisor, the close working relationships among the SIU, BCI and U.S. EPA-CID investigators provide additional benefits at the prosecutive stage as well. Findings obtained by joint investigations are presented to both state and federal prosecutors, who cooperatively evaluate prosecutive merit. This process results in the development of prosecutors who are familiar with environmental crimes, and more willing to take on cases in this highly complex regulatory field. The presence of state and federal prosecutors also results in a clearer understanding of relative priorities for prosecution, facilitating prompt decisions concerning the viability of cases.

H. Case Review

Representatives of the OEPA and the OAG jointly submitted a docket of cases reflecting publicly-filed cases prosecuted over the last five years (review of non-public investigations is obviously beyond the scope of a report intended for public dissemination). The docket reflects that during the years 1995 through 1999, Ohio has brought approximately 51 criminal environmental cases (this total includes air, water, hazardous waste and solid waste cases).

Broken down by environmental program areas, the Ohio criminal environmental enforcement program charged cases as follows for the period from 1995 through 1999 (the totals reflect cases charged in more than one program area):

	Air	Water	Hazardous Waste	Solid Waste
Number of Cases	9	14	23	15
Fines and Restitution	$ 166,700	$ 111,850	$ 691,250	$ 209,500
(after suspension)	$ 73,700	$ 67,850	$ 634,250	$ 177,500
Imprisonment	6 mos.	66.5 mos.	321 mos.	216 mos.
(after suspension)	6 mos.	41 mos.	78 mos.	103 mos.

Probation	4 mos.	6 mos.	36 mos.	24 mos.
Community Service	0 hrs.	1134 hrs.	1190 hrs.	880 hrs.

The Regional Criminal Enforcement Counsel for U.S. EPA, Region 5 is of the opinion that these statistics reflect an excellent balance of enforcement across program areas. Air, water and hazardous waste criminal cases are extensively represented within a universe of cases that also includes solid waste cases. In addition, the diversity of cases is repeated over the years analyzed, demonstrating that the diversity is institutionalized rather than episodic.

For comparison, similar statistics for U.S. EPA's criminal environmental enforcement program in Region 5 (covering six Midwestern states) is appended.

The total number of cases brought by the OEPA and the Ohio Attorney General's Office over the 5-year review period is impressive. The total number of cases brought, including solid waste cases, appears as follows:

1995	22
1996	10
1997	7
1998	6
1999	6

However, there appears to be a trend towards prosecuting fewer cases. This drop-off in total cases brought may be caused by a variety of factors, including working on more complex cases, and the cyclical nature of a smaller program. One of the most common problems cited by other criminal law enforcement organizations when prosecution numbers taper off is a lack of high-quality leads on which solid cases can be based. Therefore, it may be that the Ohio criminal environmental program needs to focus more on its lead-gathering techniques.

The level of prison time imposed is also substantial. Although state judges suspended portions of the sentences imposed, reducing the amount of both fines and jail sentences, the amounts remaining after suspension are still significant. Even after suspension, these sentences reflect substantial punishment, in terms of the number of individuals required to serve prison terms, and the length of the terms imposed. In addition, judicial suspensions are beyond the control of either an administrative agency or an Attorney General's Office. U.S. EPA believes that Ohio's environmental crimes prosecutions have created a credible deterrent to future criminal conduct.

The probation and community service sanctions have also been readily imposed in Ohio.

In general, a U.S. EPA-CID supervisor was highly complimentary of Ohio's staff and criminal

environmental enforcement program. He feels that the state's high level of devotion to criminal enforcement and willingness to work together with U.S. EPA-CID, has resulted in the Ohio program being one of the best in the nation.

APPENDIX

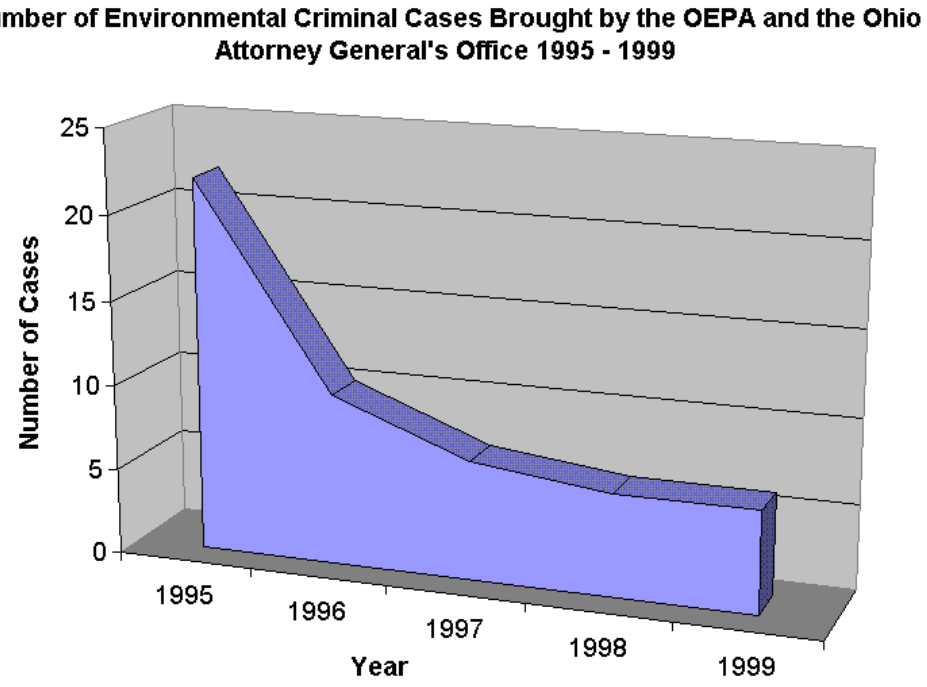
Summary by Fiscal Year (FY) of Criminal Environmental Cases Prosecuted by U.S. EPA-CID in the Six States of Region 5

Fiscal Year	Cases Charged	Custody Imposed	Fines & Restitution
99	18	229 mos.	$ 636,000
98	19	130 mos.	$ 1,619,000
97	20	243 mos.	$ 7,636,287
96	18	49 mos.	$ 677,000
95	10	90 mos.	$ 2,177,710

REVIEW OF OHIO LEGAL ENFORCEMENT OFFICES

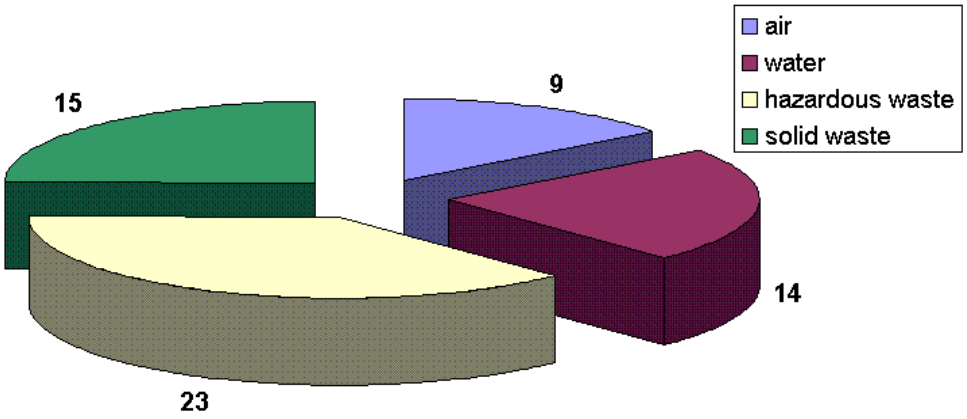
LIST OF ATTACHED DOCUMENTS

Attachment No.	Description
LEO-01	July 10, 2000 Letter from Frank J. Reed, Jr. (Assistant Attorney General, Chief-Environmental Enforcement Section, OAG) to Bertram C. Frey (Deputy Regional Counsel, Region 5 U.S. EPA), with attached list of consent decrees filed by OAG from 1990-2000.
LEO-02	June 21, 2000 Letter from Joseph P. Koncelik (Deputy Director for Legal Affairs, OEPA) to Bertram C. Frey (Deputy Regional Counsel, Region 5 U.S. EPA), responding to the U.S. EPA's "List of Follow up Items for the Review of Ohio's Authorized, Approved or Delegated Environmental Programs" including 13 Attachments.
LEO-03	In the Matter of MascoTech, Inc., regarding the property known as the Steelcraft Manufacturing Facility, 9017 Blue Ash Rd., Blue Ash, OH 45242, dated December 16, 1999. Covenant Not to Sue; Director's Final Findings and Orders.
LEO-04	"Environmental Enforcement" Excerpts: Annual Report: 1999. Office of the Ohio Attorney General, pp. 17-18; Annual Report: 1998. Office of the Ohio Attorney General, pp. 22-23; and Term Report: 1995-1998. Office of the Ohio Attorney General, pp. 37-38.
LEO-05	Criminal Enforcement Docket: "Answers to USEPA Questions"; Criminal Cases Adjudicated 1995-1999.

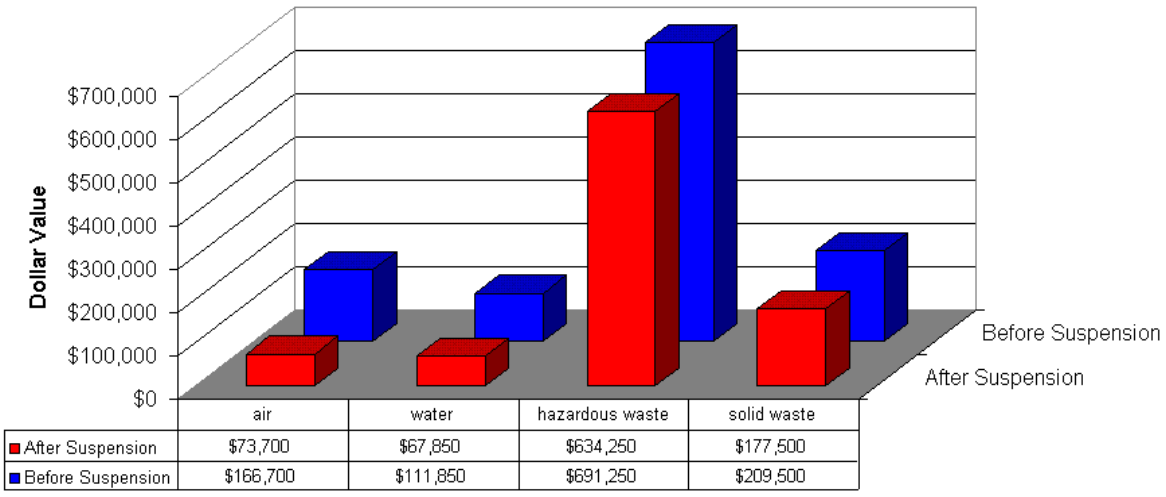


	1995	1996	1997	1998	1999
Number of Cases	22	10	7	6	6

Ohio Environmental Criminal Prosecutions 1995 - 1999 :
Total Cases Broken Down by Environmental Program Area

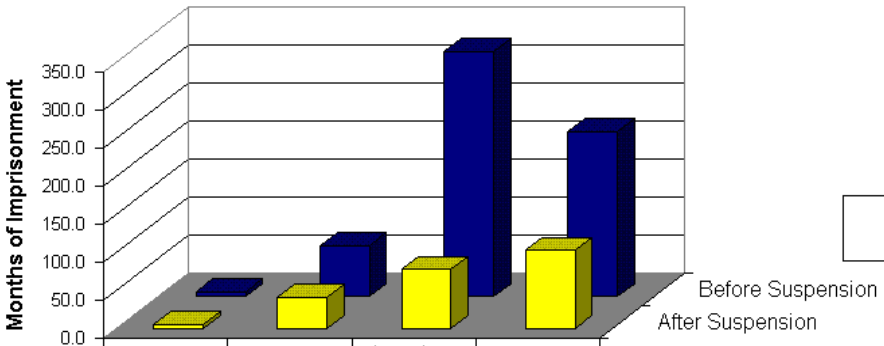


Ohio Environmental Criminal Enforcement Program 1995 - 1999 :
Fines and Restitution by Environmental Program Area Before and After Suspension of Sentence

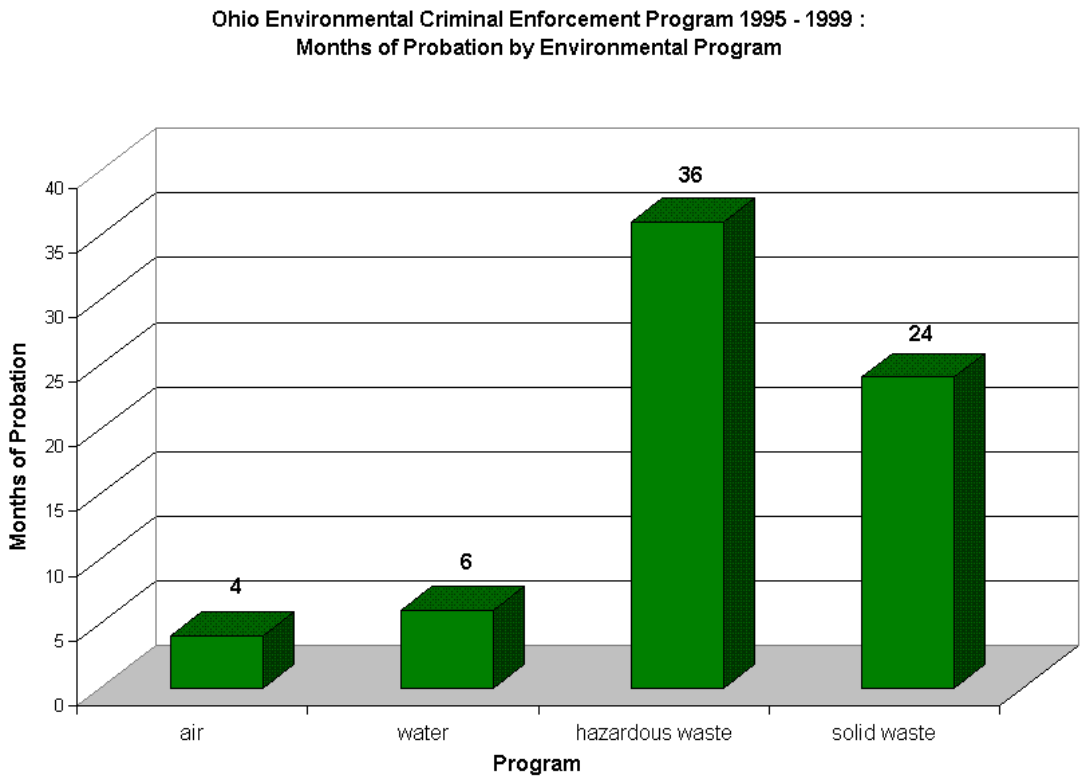


	air	water	hazardous waste	solid waste
After Suspension	$73,700	$67,850	$634,250	$177,500
Before Suspension	$166,700	$111,850	$691,250	$209,500

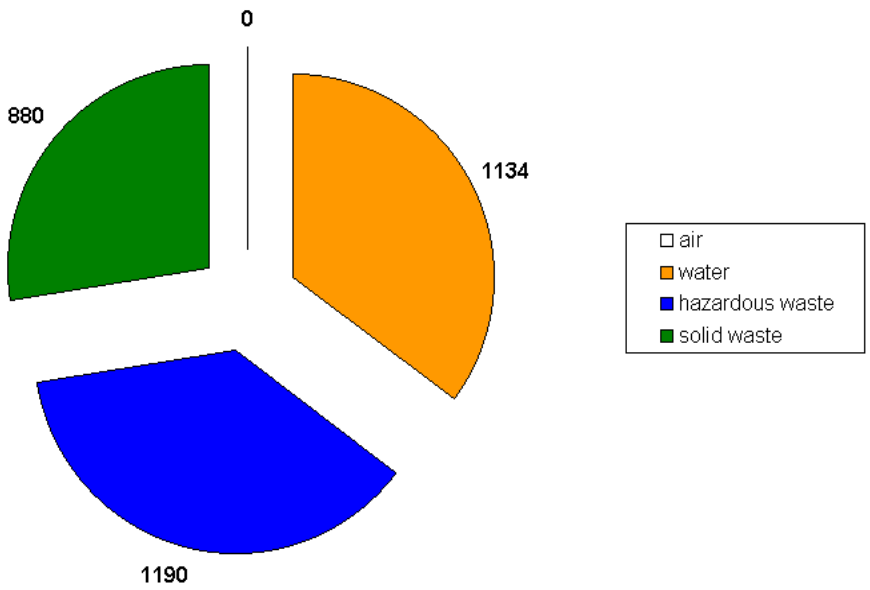
Ohio Environmental Criminal Enforcement Program 1995 - 1999 :
Months of Imprisonment by Environmental Program Before and After Suspension of Sentence



	air	water	hazardous waste	solid waste
After Suspension	6.0	41.0	78.0	103.0
Before Suspension	6.0	66.5	321.0	216.0


Ohio Environmental Criminal Enforcement Program 1995 - 1999 :
Months of Probation by Environmental Program
Months of Probation
0
5
10
15
20
25
30
35
40
4
6
36
24
air
water
hazardous waste
solid waste
Program

Ohio Environmental Criminal Enforcement Program 1995 - 1999 :
Months of Community Service Imposed, by Environmental Program



Appendix: Acronym Dictionary (Alphabetical Order)

ACRONYM	DEFINITION	1st pg upon which acronym appears
AECAB	Air Enforcement & Compliance Assurance Branch	CAA p.7
AIRS	Aerometric Information Retrieval System	OLS p.22
ARD	Air & Radiation Division	CAA p.7
BACT	Best Available Control Technology	CAA p.42
BAT	Best Available Technology	CAA p.38
BCI	Bureau of Criminal Identification & Investigation	CRIM p.1
BIF	Boiler Industrial Finances	OLS p.12
CAA	Clean Air Act	2
CAFO	Consent Agreement and Final Order	RCRA p.21
CAFO	Concentrated Animal Feeding Operation	6
CBI	Confidential Business Information	OLS p.27
CDAPC	Canton Department of Air Pollution Control	CAA p.8
CDO	Central District Office	CAA p.8
CEIs	Compliance Evaluation Inspections	RCRA p.18
CEM	Continuous Emission Monitoring	CAA p.21
CHD	Cincinnati Health Department	RCRA p.24
CHO	Chief Hearing Officer	OLS p.27
CID	Criminal Investigation Division	CRIM p.2
CLAA[1]	Cleveland Department of Air Pollution Control	CAA p.8
CM&E	Compliance Monitoring & Enforcement Strategy	RCRA p.7
CO	Central Office	CAA p.8

[1] Cleveland Department of Air Pollution Control was assigned this acronym CLAA, to distinguish it from the Canton Department of Air Pollution Control (CDAPC). It stands for the "Cleveland Local Air Authority."

CRIM	Bureau of Criminal Identification & Investigation	ENF p.1
CWA	Clean Water Act	3
DAPC	Division of Air Pollution Control	CAA p.8
DHWM	Division of Hazardous Waste Management	RCRA p.7
DMR	Discharge Monitoring Report	7
DNR	Department of Natural Resources	OAG p.3
DO	District Office	OLS p.3
DOES	Department of Environmental Services	RCRA p.16
DSIWM	Division of Solid & Infectious Waste Management	OLS p.20
EAR	Enforcement Action Request	OLS p.21
EC	Enforcement Committee	OLS p.25
EnPPA	Environmental Performance Partnership Agreement	CAA p.23
ERAC	Environmental Review Appeals Commission	OLS p.25
F&O	Findings & Orders	OLS p.3
FBI	Federal Bureau of Investigation	OAG p.9
FIP	Federal Implementation Plan	CAA p.15
FOIA	Freedom of Information Act	RCRA p.15
FTEs	Full Time Equivalents	OLS p.1
FY	Fiscal Year	CWA p.3
GAO	Government Accounting Office	CAA p.24
HAP	Hazardous Air Pollutant	4
HCDOES	Hamilton County Department of Environmental Services	CAA p.8
HPV	High Priority Violators	OLS p.23
HWCER	Hazardous Waste Civil Enforcement Response	RCRA p.7
LAA	Local Air Pollution Authorities	CAA p.7
LAER	Lowest Achievable Emission Rate	4

LDR	Land Disposal Restrictions	RCRA p.27
LEAPS	Liquid Effluent Analysis Processing System	CWA p.13
MACT	Maximum Achievable Control Technology	4
MOA	Memorandum of Agreement	CWA p.13
MOR	Monthly Operations Report	CWA p.13
MOU	Memorandum of Understanding	OLS p.3
MSS	Major Stationary Source	4
MSWLFs	Municipal Solid Waste Landfills	8
NAAQS	National Ambient Air Quality Standards	CAA p.3
NEDO	Northeast District Office	CAA p.8
NEPPS	National Environmental Performance Partnerships	CAA p.50
NESHAPs	National Emission Standards for Hazardous Air Pollutants	4
NFA	No Further Action	OLS p.15
NOV	Notice of Violation	OLS p.3
NOVAA	North Ohio Valley Air Authority	CAA p.8
NPDES	National Pollutant Discharge Elimination System	2
NSPS	Clean Air Act Standards of Performance For New Stationary Source	2
NSR	New Source Review	2
NWDO	Northwest District Office	CAA p.8
NYPIRG	New York Public Interest Research Group	CAA p.12
OAG	Office of the Ohio Attorney General	ENF p.1
OEPA	Ohio Environmental Protection Agency	1
OLS	Office of Legal Services	ENF p.1
ORC	Office of Regional Counsel	CAA p.7
OSHA	Occupational Safety & Health Act	OAG p.12

PCS	Permit Compliance System	7
PIRG	Ohio Public Interest Research Group	2
PLAA	Portsmouth City Health Department, Air Pollution Unit	CAA p.8
PQLs	Practical Quantification Levels	7
PSD	Prevention of Significant Deterioration	2
PSDs	Permit Support Documents	CWA p.12
PTI	Permit to Install	CAA p.27
PTO	Permit to Operate	CAA p.27
QA/QC	Quality Assistance/Quality Control	CAA p.24
QStP	"Quality Service through Partnership"	CAA p.32
RAPCA	Regional Air Pollution Control Authority	CAA p.8
RAWMD	Akron Regional Air Quality Management District	CAA p.8
RCRA	Resource Conservation and Recovery Act	2
RCRIS	RCRA Information System	RCRA p.7
SEDO	Southeast District Office	CAA p.8
SEP	Supplemental Environmental Project	CAA p.33
SIP	State Implementation Plan	CAA p.2
SIU	Special Investigative Unit	CRIM p.4
SNCs	Facilities in Significant Noncompliance	OLS p.8
SWDO	Southwest District Office	CAA p.8
SWIMS	Surface Water Information Management System	7
TDES	Toledo Department of Public Utilities, Division of Environmental Services	CAA p.8
TMDL	Total Maximum Daily Load	6
TRI	Toxic Release Inventory	OLS p.21
U.S. EPA	United States Environmental Protection Agency	1

VAP	Voluntary Action Program	7
WET	Whole Effluent Toxicity	CWA p.2
WQBELs	Water Quality Based Effluent Limits	7

Appendix: Acronym Dictionary

(listed in order of 1st page upon which document appears)

ACRONYM	DEFINITION	1st pg upon which acronym appears
U.S. EPA	United States Environmental Protection Agency	1
OEPA	Ohio Environmental Protection Agency	1
PIRG	Ohio Public Interest Research Group	2
CAA	Clean Air Act	2
NPDES	National Pollutant Discharge Elimination System	2
RCRA	Resource Conservation and Recovery Act	2
NSPS	Clean Air Act Standards of Performance For New Stationary Source	2
NSR	New Source Review	2
PSD	Prevention of Significant Deterioration	2
CWA	Clean Water Act	3
MSS	Major Stationary Source	4
MACT	Maximum Achievable Control Technology	4
NESHAPs	National Emission Standards for Hazardous Air Pollutants	4
LAER	Lowest Achievable Emission Rate	4
HAP	Hazardous Air Pollutant	4
TMDL	Total Maximum Daily Load	6
CAFO	Concentrated Animal Feeding Operation	6
SWIMS	Surface Water Information Management System	7
DMR	Discharge Monitoring Report	7
PCS	Permit Compliance System	7
PQLs	Practical Quantification Levels	7
WQBELs	Water Quality Based Effluent Limits	7

VAP	Voluntary Action Program	7
MSWLFs	Municipal Solid Waste Landfills	8
SIP	State Implementation Plan	CAA p.2
NAAQS	National Ambient Air Quality Standards	CAA p.3
LAA	Local Air Pollution Authorities	CAA p.7
ARD	Air & Radiation Division	CAA p.7
ORC	Office of Regional Counsel	CAA p.7
AECAB	Air Enforcement & Compliance Assurance Branch	CAA p.7
DAPC	Division of Air Pollution Control	CAA p.8
CO	Central Office	CAA p.8
CDO	Central District Office	CAA p.8
NEDO	Northeast District Office	CAA p.8
NWDO	Northwest District Office	CAA p.8
SEDO	Southeast District Office	CAA p.8
SWDO	Southwest District Office	CAA p.8
RAWMD	Akron Regional Air Quality Management District	CAA p.8
CDAPC	Canton Department of Air Pollution Control	CAA p.8
TDES	Toledo Department of Public Utilities, Division of Environmental Services	CAA p.8
PLAA	Portsmouth City Health Department, Air Pollution Unit	CAA p.8
HCDOES	Hamilton County Department of Environmental Services	CAA p.8
CLAA[1]	Cleveland Department of Air Pollution Control	CAA p.8
RAPCA	Regional Air Pollution Control Authority	CAA p.8
NOVAA	North Ohio Valley Air Authority	CAA p.8

[1] Cleveland Department of Air Pollution Control was assigned this acronym CLAA, to distinguish it from the Canton Department of Air Pollution Control (CDAPC). It stands for the "Cleveland Local Air Authority."

NYPIRG	New York Public Interest Research Group	CAA p.12
FIP	Federal Implementation Plan	CAA p.15
CEM	Continuous Emission Monitoring	CAA p.21
EnPPA	Environmental Performance Partnership Agreement	CAA p.23
GAO	Government Accounting Office	CAA p.24
QA/QC	Quality Assistance/Quality Control	CAA p.24
PTO	Permit to Operate	CAA p.27
PTI	Permit to Install	CAA p.27
QStP	"Quality Service through Partnership"	CAA p.32
SEP	Supplemental Environmental Project	CAA p.33
BAT	Best Available Technology	CAA p.38
BACT	Best Available Control Technology	CAA p.42
NEPPS	National Environmental Performance Partnerships	CAA p.50
WET	Whole Effluent Toxicity	CWA p.2
FY	Fiscal Year	CWA p.3
PSDs	Permit Support Documents	CWA p.12
MOA	Memorandum of Agreement	CWA p.13
MOR	Monthly Operations Report	CWA p.13
LEAPS	Liquid Effluent Analysis Processing System	CWA p.13
RCRIS	RCRA Information System	RCRA p.7
CM&E	Compliance Monitoring & Enforcement Strategy	RCRA p.7
DHWM	Division of Hazardous Waste Management	RCRA p.7
HWCER	Hazardous Waste Civil Enforcement Response	RCRA p.7
FOIA	Freedom of Information Act	RCRA p.15
DOES	Department of Environmental Services	RCRA p.16
CEIs	Compliance Evaluation Inspections	RCRA p.18

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CAFO	Consent Agreement and Final Order	RCRA p.21
CHD	Cincinnati Health Department	RCRA p.24
LDR	Land Disposal Restrictions	RCRA p.27
OLS	Office of Legal Services	ENF p.1
OAG	Office of the Ohio Attorney General	ENF p.1
CRIM	Bureau of Criminal Identification & Investigation	ENF p.1
FTEs	Full Time Equivalents	OLS p.1
MOU	Memorandum of Understanding	OLS p.3
NOV	Notice of Violation	OLS p.3
DO	District Office	OLS p.3
F&O	Findings & Orders	OLS p.3
SNCs	Facilities in Significant Noncompliance	OLS p.8
BIF	Boiler Industrial Finances	OLS p.12
NFA	No Further Action	OLS p.15
DSIWM	Division of Solid & Infectious Waste Management	OLS p.20
TRI	Toxic Release Inventory	OLS p.21
EAR	Enforcement Action Request	OLS p.21
AIRS	Aerometric Information Retrieval System	OLS p.22
HPV	High Priority Violators	OLS p.23
EC	Enforcement Committee	OLS p.25
ERAC	Environmental Review Appeals Commission	OLS p.25
CHO	Chief Hearing Officer	OLS p.27
CBI	Confidential Business Information	OLS p.27
DNR	Department of Natural Resources	OAG p.3
FBI	Federal Bureau of Investigation	OAG p.9
OSHA	Occupational Safety & Health Act	OAG p.12

BCI	Bureau of Criminal Identification & Investigation	CRIM p.1
CID	Criminal Investigation Division	CRIM p.2
SIU	Special Investigative Unit	CRIM p.4